

IN THE U.S. DISTRICT COURT.  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION  
CAUSE NO. CV-07-166-BLG-CSO

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TIMOTHY McCULLOUGH	:	
	:	
Plaintiff	:	<b>COURT TRANSCRIPT</b>
	:	Volume II
vs.	:	
	:	
JOHNSON, RODENBURG & LAUINGER:	:	
	:	
Defendant	:	

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April 15, 2009

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R E P O R T E D B Y:

VIRGINIA LEYENDECKER, Certified Shorthand  
Reporter, (NJ License No. 1701) and Notary Public, on  
the above date, commencing at 8:30 a.m., at the  
James F. Battin United States Courthouse, 316 North  
26th Street, Billings, Montana.

BEFORE: Hon. Carolyn S. Ostby

VK LEYENDECKER, LLC  
20 Medicine Crow Road  
Columbus, Mt. 59019 - (406) 322-5061

1       A P P E A R A N C E S:

2               HEENAN LAW FIRM  
3               BY:   JOHN HEENAN, ESQUIRE  
                For the Plaintiff

4               BOHYER, SIMPSON & TRANEL, P.C.  
5               BY:   FRED SIMPSON, JR., ESQUIRE  
                and JOHN BOHYER, ESQUIRE  
                For the Defendant

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                  Columbus, Mt. 59019 - (406) 322-5061

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1 THE COURT: The record will  
2 reflect all of the jurors, counsel and the  
3 parties are present.

4 Plaintiff may call his next  
5 witness.

6 MR. HEENAN: Thank you, Your  
7 Honor. Plaintiff will call Ken Lucero.

8 THE COURT: Mr. Lucero, please  
9 come forward and be sworn.

10 KEN LUCERO, having been duly sworn, was  
11 examined and testified as follows:

12 THE CLERK: Have a seat, state  
13 your full name and spell it.

14 THE WITNESS: My name and what?

15 THE CLERK: Tell us your name and  
16 spell it for the record.

17 THE WITNESS: Kenneth Lucero,  
18 K-e-n-n-e-t-h, L-u-c-e-r-o.

19 DIRECT EXAMINATION

20 BY MR. HEENAN:

21 Q. Ken, can you please state your address as  
22 well?

23 A. 1710 Evans, Butte, Montana.

24 Q. Have you ever testified in a case before,  
25 Ken?

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1 A. No, never.

2 Q. We need to go kind of slow so the jury can  
3 hear you and the court reporter can type in what  
4 is being said.

5 A. Okay.

6 Q. Mr. Lucero, were you sued by Johnson,  
7 Rodenburg & Lauinger?

8 A. Yes, I was.

9 Q. And you were sued by Johnson, Rodenburg &  
10 Lauinger on behalf of a company called Portfolio  
11 Recovery Associates?

12 A. Yes.

13 Q. And Portfolio Recovery Associates --

14 MR. SIMPSON: Objection.  
15 Leading.

16 THE COURT: Overruled.

17 BY MR. HEENAN:

18 Q. Portfolio Recovery Associates asserted  
19 that they had purchased your debt from another  
20 company. Is that correct?

21 A. Yes.

22 Q. Do you recall the company that they said  
23 they purchased the debt from?

24 A. No.

25 Q. Would it refresh your recollection if I

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1       showed you the lawsuit?

2       A.           Maybe.

3                   MR. HEENAN: Your Honor, this has  
4       been marked as Plaintiff's Exhibit 110. It's not  
5       in evidence, but I would ask that it be published  
6       for the jury for illustrative purposes only.

7                   THE COURT: Any objection?

8                   MR. BOHYER: Objection to  
9       relevance and 403.

10                  THE COURT: I will sustain and  
11       you can show it to him.

12                  MR. HEENAN: Thank you, Your  
13       Honor. May I approach?

14                  THE COURT: You may.

15       BY MR. HEENAN:

16       Q.       Take a look at that, Ken, and see if you  
17       recall who Portfolio said they had purchased an  
18       account from.

19       A.       From City Financial.

20       Q.       Right.

21       A.       Yeah.

22       Q.       So Portfolio said they were suing you  
23       because you owed money to City Financial.

24                  THE COURT: Please don't lead  
25       him, okay?

1 THE WITNESS: Yes, that's right.

2 MR. HEENAN: Sure, Your Honor.

3 BY MR. HEENAN:

4 Q. Had you ever borrowed money from City  
5 Financial?

6 A. No, never.

7 Q. Did you have an account with City  
8 Financial?

9 A. No.

10 Q. Did you owe City Financial any money?

11 A. No.

12 MR. BOHYER: Objection relevance,  
13 Your Honor.

14 THE COURT: Overruled.

15 BY MR. HEENAN:

16 Q. What was your recollection when you were  
17 served with this lawsuit?

18 A. I got a little worried.

19 Q. Why is that?

20 A. Because I didn't know what it was all  
21 about. I mean, cops come to my door and knock on  
22 the door and serve me all these papers, and,  
23 looking at them, I don't know what it's all about.

24 Q. So what did you do after you had been  
25 served with all these papers by the police?

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1       A.           I don't know. I tried to get hold of  
2       Legal Aid. I couldn't get hold of them. So I  
3       know this attorney in Butte. I took them down to  
4       him and he filed a paper for me.

5       Q.           Who was the attorney that you knew?

6       A.           Vicevich.

7       Q.           He is a private attorney in Butte?

8       A.           Yes.

9       Q.           And how did you know Vicevich?

10      A.           I had a case with him for my Social  
11      Security. I was trying to get Social Security  
12      disability and he had the case.

13      Q.           And he helped you to get Social Security  
14      disability?

15      A.           No, I didn't get it that time. I had to  
16      refile.

17      Q.           So did Mr. Vicevich step in and defend you  
18      in the lawsuit that had been brought against you  
19      by Johnson Rodenburg?

20      A.           No, he just filed this answer, they call  
21      it, and he told me to go file. It would cost me  
22      70 bucks to do it. And he said that he couldn't  
23      help me unless I had a thousand bucks up front.

24      Q.           Did you have a thousand bucks up front?

25      A.           No, I didn't.



1 Q. So basically, he, for free --

2 THE COURT: Please don't lead  
3 him.

4 MR. HEENAN: Sure. Sorry, Your  
5 Honor.

6 BY MR. HEENAN:

7 Q. Did Mr. Vicevich say that he could help  
8 you going forward?

9 MR. BOHYER: Objection. Hearsay.

10 THE COURT: Overruled.

11 BY MR. HEENAN:

12 Q. Did Mr. Vicevich say he could defend you?

13 A. No.

14 Q. Did he say there was a way that he could  
15 defend you?

16 A. No.

17 MR. BOHYER: Objection, hearsay,  
18 Your Honor.

19 THE COURT: I will overrule that,  
20 but --

21 MR. BOHYER: May I have a  
22 continuing objection?

23 THE COURT: You may.

24 BY MR. HEENAN:

25 Q. Did you know how to answer a lawsuit?

1       A.           No, I didn't.

2       Q.           Would you have been able to answer the  
3       lawsuit without Mr. Vicevich's assistance?

4       A.           No.

5                               MR. BOHYER:  Objection,  
6       speculation.

7                               THE COURT:  Overruled.

8       BY MR. HEENAN:

9       Q.           So with Mr. Vicevich's help, did you  
10      answer the lawsuit?

11      A.           Yeah, I guess I did.  He gave me papers  
12      and said to file it.  And he said that I could  
13      work something out with them while they had that  
14      paper.

15      Q.           What did you do with the paper?

16      A.           I filed it with the District Court.

17      Q.           And then what was the next thing that  
18      happened in the lawsuit?

19      A.           I got some more papers and I didn't know  
20      what to do with them so I tried to get hold of  
21      Legal Aid.  And I went to their office in Butte,  
22      and there was a phone number I was supposed to  
23      call --

24      Q.           When you say "the papers," let me stop you  
25      there.

1 MR. HEENAN: May I approach the  
2 witness?

3 THE COURT: You may.

4 BY MR. HEENAN:

5 Q. The papers that you're talking about, Ken,  
6 were those papers from Johnson Rodenburg?

7 A. Yeah, they were.

8 MR. HEENAN: If you would please  
9 bring up Exhibit 4-2, which is in evidence.

10 BY MR. HEENAN:

11 Q. I want you to look at your screen there,  
12 Ken.

13 MR. HEENAN: If you can blow up  
14 just that language.

15 MR. BOHYER: I object to this.  
16 This is reference to Mr. McCullough's suit.  
17 There --

18 THE COURT: There is no question  
19 pending.

20 BY MR. HEENAN:

21 Q. See this language here, Mr. Lucero?

22 A. Uh-huh.

23 Q. Is that the same exact language that  
24 Johnson Rodenburg sent you in the papers that  
25 you're talking about?

1 MR. BOHYER: Objection. Facts  
2 not in evidence, Your Honor.

3 THE COURT: Overruled.

4 BY MR. HEENAN:

5 Q. Mr. Lucero, if it helps you, you can  
6 refresh your recollection by just looking at the  
7 requests for admission that Johnson Rodenburg sent  
8 you.

9 A. I just kind of went over it a little bit  
10 and didn't understand what it was so that's why I  
11 tried to get hold of Legal Aid.

12 Q. Was this language confusing to you?

13 A. Oh, yeah. I don't understand none of this  
14 court stuff.

15 Q. Was it clear to you from that language  
16 what would happen if you didn't respond to these  
17 requests within a certain time period?

18 A. I wasn't sure, but I thought I should do  
19 something about it. The first papers I got were a  
20 year old. I wasn't sure if it was any good or  
21 not. But they kept sending the stuff, so I  
22 thought I should get something done.

23 So I tried to get hold of Legal  
24 Aid. So I called that 900 number -- or 800  
25 number.

1 Q. 800, not 900.

2 A. Right, but it was the 866 number.

3 Q. For Legal Services?

4 A. Right.

5 Q. Because you didn't know how to deal with  
6 this. Is that fair?

7 A. Right. Right.

8 Q. Were you able to get Legal Services to  
9 assist you?

10 A. Yes, I did.

11 Q. Did you respond within 30 days to these  
12 requests for admission?

13 A. I don't think so.

14 Q. Did you know that you needed to respond  
15 within 30 days?

16 A. I didn't understand them. That's why I  
17 got hold of Legal Aid.

18 Q. In the meantime, did Johnson Rodenburg  
19 file some more papers? Did they file a motion?

20 A. I think they did. I'm not sure.

21 Q. Let me show you something else, to see if  
22 it refreshes your recollection.

23 A. I was getting paperwork in the mail all  
24 the time from them, from different lawyers, I  
25 thought.

1 MR. HEENAN: May I approach the  
2 witness?

3 THE COURT: You may.

4 MR. HEENAN: Thank you, Your  
5 Honor.

6 BY MR. HEENAN:

7 Q. What are those documents I just handed  
8 you, Mr. Lucero?

9 A. The thing here says Affidavit in Support  
10 of a Motion.

11 Q. Who is the affidavit by?

12 A. Portfolio, looks like. The plaintiff, you  
13 mean?

14 Q. Who signed the affidavit?

15 A. Oh, who signed it? Charles Dendy.

16 MR. BOHYER: Excuse me. May I be  
17 provided a copy of this?

18 THE COURT: Yes. Would you show  
19 counsel what you showed the witness, please.

20 MR. HEENAN: Sure, Your Honor.  
21 It's Exhibit 110. For the record, Your Honor,  
22 these are Exhibits 110-7 and 110-3.

23 THE COURT: That exhibit was  
24 withdrawn.

25 MR. HEENAN: That's right, Your

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1 Honor. I'm not going to offer it.

2 BY MR. HEENAN:

3 Q. So who, again, was this affidavit signed  
4 by?

5 A. By Charles Dendy.

6 Q. And what did Charles Dendy write in his  
7 affidavit?

8 A. Serving requests for admission upon the  
9 defendant by mail March 29, 2007 and have received  
10 no answer to these requests within 30 days as  
11 required by law.

12 Q. And then the second page that you're  
13 holding, what is that document?

14 A. Says Motion For Summary Judgement.

15 Q. And what is the basis for the motion for  
16 summary judgement? What does it say right there?

17 A. I don't understand.

18 Q. Sure. What is Johnson Rodenburg saying in  
19 support of their motion?

20 A. It's based upon the fact the requests for  
21 admissions hereto served on the defendant are now  
22 deemed admitted pursuant to law.

23 Q. Thank you, Mr. Lucero. So after you  
24 received these documents, Legal Services came in  
25 to represent you?

1 A. I think it was after these, yeah.

2 Q. Did the Court set a hearing on the motion  
3 that Johnson Rodenburg had filed?

4 A. Yeah, I think they did.

5 Q. In Butte?

6 A. Yep.

7 Q. And did Legal Services appear at that  
8 hearing on your behalf?

9 A. Yeah, they did.

10 Q. And you were there too?

11 A. Right.

12 Q. Right?

13 A. Right.

14 Q. And Johnson Rodenburg appeared in court  
15 for that hearing?

16 A. No, they didn't.

17 Q. What was the judge's reaction when Johnson  
18 Rodenburg didn't show up for the hearing?

19 MR. BOHYER: Objection,  
20 relevance, Your Honor.

21 THE COURT: Sustained.

22 MR. HEENAN: I don't have any  
23 more questions -- I'm sorry. I do.

24 BY MR. HEENAN:

25 Q. What was the disposition of that case?



1 Did they drop the case against you?

2 A. Yes, they dropped it in July.

3 MR. HEENAN: No further  
4 questions.

5 THE COURT: You may  
6 cross-examine.

7 MR. BOHYER: Thank you, Your  
8 Honor.

9 CROSS-EXAMINATION

10 BY MR. BOHYER:

11 Q. Mr. Lucero, good morning.

12 A. Good morning.

13 Q. Do you recall that we met once before?

14 A. In Butte, wasn't it with you?

15 Q. Yes, sir. You remember that.

16 A. You did my deposition.

17 Q. I did. I'm trying to recall, sir, did you  
18 tell me whether you had ever been deposed before?

19 A. What do you mean "deposed"?

20 Q. Sitting in the conference room there with  
21 a court reporter. Was that the first time you had  
22 ever done that?

23 A. Yeah, that was the very first time.

24 Q. That wasn't the only time you were  
25 involved in a court proceeding, was it?

1       A.           No.

2       Q.           You had been in court before and testified  
3       in that kind of thing.

4       A.           Just for myself.

5       Q.           Yeah. But Mr. Heenan had asked you some  
6       questions about your familiarity with the court  
7       process, and I think I heard you say no, you  
8       weren't familiar with it.

9       A.           Oh, well. I mean this is a civil matter.  
10      I was talking, what do you call that? It was a  
11      felony matter, whatever you want to call it.

12      Q.           My point, though, Mr. Lucero, when you  
13      said you're not familiar with the court proceeding  
14      and this kind of thing, you actually are familiar  
15      with it, aren't you?

16                   MR. HEENAN: I object. That  
17      mischaracterizes the witness' testimony.

18                   THE COURT: Overruled.

19      BY MR. BOHYER:

20      Q.           I'm sorry. I didn't hear your answer,  
21      sir.

22      A.           It's been over 30 years since something  
23      like this has happened.

24      Q.           The only point I'm asking, sir, is in fact  
25      you're familiar with this court process, aren't

1       you?

2       A.           Yeah, I guess.

3       Q.           When I was walking in this morning, I saw  
4       you sitting in the library with Mr. McCullough.  
5       Did you speak with him about this case?

6       A.           No, I didn't.

7       Q.           When I had spoken with you last summer,  
8       and I don't recall, sir, if it was July or August,  
9       but when we took your deposition there, I had  
10      asked you if you'd ever met Mr. McCullough and you  
11      told me you had not. True?

12      A.           No, I didn't. I still haven't.

13      Q.           Aside from you seeing that one blow-up  
14      document today here from Mr. McCullough's case,  
15      you told me you had never seen any of the  
16      paperwork from his case, true?

17      A.           I never did, no.

18      Q.           And in fact, I think you told me that you  
19      had never reviewed any of that or spoken to him.

20      A.           No, I never did.

21      Q.           That remains true today?

22      A.           That still remains true. I didn't know I  
23      was sitting next to him.

24      Q.           Lisa Lauinger, do you know her?

25      A.           No, I don't.

1 Q. Have you ever spoken to her?

2 A. I don't know.

3 Q. You never talked with my clients on your  
4 case, did you?

5 A. With your client? Who do you mean?

6 Q. Do you know who my client is?

7 A. Portfolio, isn't it?

8 Q. No.

9 A. Who is it?

10 Q. I represent Johnson, Rodenburg & Lauinger.

11 A. I never even knew I had a case here until  
12 Mr. Heenan told me. I thought I had a case  
13 against Portfolio.

14 MR. HEENAN: Object to  
15 attorney-client privilege.

16 I don't want you to testify about  
17 what you and I talked about.

18 THE WITNESS: Okay.

19 BY MR. BOHYER:

20 Q. Your case was Portfolio against Ken  
21 Lucero, true?

22 A. That's what I thought, yes.

23 Q. It wasn't Johnson, Rodenburg & Lauinger.  
24 They were the lawyers, right?

25 A. That's what I thought.

1 Q. In fact, over the years and when this suit  
2 finally got filed against you, your beef was with  
3 Portfolio, true?

4 A. I don't know that I had a beef with  
5 anybody. They sent me the paperwork.

6 Q. My point, sir, is that the issues that you  
7 had weren't with my clients. They were with  
8 somebody who was trying to collect the debt.  
9 True?

10 A. Right.

11 Q. Some questions were asked of you earlier  
12 by plaintiff's counsel that Johnson Rodenburg had  
13 sued you. Do you understand, Mr. Lucero, that  
14 Johnson Rodenburg, they don't own that debt? It's  
15 not theirs they are collecting. They are  
16 collecting that for a client.

17 A. I think so, yeah.

18 Q. Okay. Would you agree with me, sir, that  
19 every client, including yourself, is entitled to  
20 have a lawyer when they go into court?

21 A. Right.

22 MR. BOHYER: Mr. Lucero, I  
23 appreciate your time. Thank you, sir.

24 THE COURT: Is there any  
25 redirect?

1 MR. HEENAN: Just briefly, Your  
2 Honor.

3 REDIRECT EXAMINATION

4 BY MR. HEENAN:

5 Q. Mr. Lucero, I want you to -- hold on.  
6 Who's the person who signed the Complaint against  
7 you, Mr. Lucero?

8 A. Down here? Lisa -- I can't pronounce that  
9 last name.

10 Q. Spell it out.

11 A. L-a-u-i-n-g-e-r.

12 Q. Lauinger.

13 A. Lauinger.

14 Q. Who is the person who signed these  
15 requests for admission?

16 A. Charles Dendy.

17 MR. HEENAN: No further  
18 questions. Thank you.

19 THE COURT: Thank you, Mr.  
20 Lucero. You may step down.

21 May this witness be excused?

22 MR. HEENAN: Yes, Your Honor.

23 MR. BOHYER: Yes, Your Honor.

24 THE COURT: You're free to go,  
25 Mr. Lucero.

1 Please call your next witness.

2 MR. HEENAN: Plaintiff would call  
3 James Patten.

4 THE COURT: Please come forward  
5 and be sworn.

6 JAMES PATTEN, having been duly sworn, was  
7 examined and testified as follows:

8 THE CLERK: Please have a seat.  
9 State your full name and spell it, please.

10 THE WITNESS: James Patten,  
11 P-a-t-t-e-n.

12 BY MR. HEENAN:

13 Q. Mr. Patten, good morning.

14 A. Good morning.

15 Q. Would you state your business address for  
16 the record.

17 A. 2817 2nd Avenue North, Billings.

18 Q. How are you employed, sir?

19 A. I'm an attorney.

20 Q. Where?

21 A. The firm name is Patten, Peterman,  
22 Bekkedal and Green.

23 Q. That's a law firm here in town?

24 A. Yes.

25 Q. Private law firm?

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1       A.           Yes.

2       Q.           You're one of the partners in that law  
3       firm?

4       A.           I am.

5       Q.           Can you please summarize for the jury your  
6       educational background.

7       A.           I have a degree from the University of  
8       Montana in economics, and a law degree from George  
9       Washington University.

10      Q.           When did you get your law degree?

11      A.           1978.

12      Q.           Have you been a practicing attorney since  
13      then?

14      A.           Yes.

15      Q.           How many years is that?

16      A.           31.

17      Q.           All here in Billings? Take us through the  
18      evolution of your practice.

19      A.           Originally I practiced for three years  
20      working for a group of farmers and ranchers,  
21      dealing with environmental issues. Then I opened  
22      an office, and, shortly after that, started -- one  
23      of the major parts of my work was collection of  
24      primarily commercial accounts.

25                   And then, as the 1980s progressed,

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1 economy went and got worse and collection of  
2 commercial accounts tapered off and was replaced  
3 with bankruptcy. And that's pretty much what I've  
4 done since.

5 Q. What is kind of the distinction between  
6 commercial accounts and consumer? What does it  
7 mean, a commercial account?

8 A. What I mean by commercial account is a  
9 business account, where a home contractor owns a  
10 lumber yard, or something like that.

11 Q. What would your role be as a lawyer  
12 collecting on accounts?

13 A. We file suit and prosecute a claim to try  
14 to collect it for the lumber yard, in my example,  
15 or whoever the owner of the account was.

16 Q. To get a judgement?

17 A. To get a judgement and then try to collect  
18 on that judgement.

19 Q. So I'm sorry. I stopped you.

20 A. Then that work kind of tapered off and it  
21 was replaced with bankruptcy work, and that's  
22 primarily what I've done since, is focused on  
23 bankruptcy.

24 Q. And what does it mean, bankruptcy work?

25 A. People filing for bankruptcy or businesses

1 filing for bankruptcy or creditors in bankruptcy  
2 cases.

3 Q. Can you explain what a creditor is and  
4 what a debtor is?

5 A. The debtor in bankruptcy is the person  
6 that owes the money and the creditor is the person  
7 to whom the money is owed.

8 Q. Is it fair to say sometimes you're  
9 representing the people that owe the money or the  
10 businesses that owe the money, and sometimes  
11 you're representing the people or businesses that  
12 are trying to collect the money?

13 A. Yes.

14 Q. Would it be fair to say you have a  
15 specialization in debtor/creditor relations?

16 A. Yes.

17 Q. What would that mean?

18 A. In connection with bankruptcy cases, a lot  
19 of times there's work before the bankruptcy case  
20 is actually filed, where you're suing somebody and  
21 they file for bankruptcy, or our clients get sued  
22 before they file for bankruptcy, and we represent  
23 both parties, you know. We represent creditors  
24 and debtors in pre-bankruptcy kinds of lawsuits.  
25 And we represent institutions and foreclosures and

1 repossession and things like that, too.

2 Q. As part of your practice, have you ever  
3 filed lawsuits on behalf of creditors?

4 A. Yes.

5 Q. Many?

6 A. Hundreds, I would say.

7 Q. Is it fair to say sometimes the creditors  
8 are seeking a smaller amount of money, sometimes a  
9 larger amount of money?

10 A. Yes.

11 Q. In terms of what you need to do as a  
12 lawyer representing a creditor, does that matter?

13 A. In terms of what we do in preparing the  
14 lawsuit to be filed?

15 Q. Correct, whether it's a big one or small  
16 one. I mean, does matter how much work you have  
17 to put into it?

18 A. No, not really. As an attorney, we are  
19 obligated to engage in a diligent review of the  
20 claim, to make sure that we can substantiate it.  
21 So whether we are suing for \$500 or \$500,000, we  
22 look at the documents that are provided to us, to  
23 try to verify that there's a debt that's owed and  
24 that we are suing for the correct amount of money  
25 and that we are making proper claims.

1 Q. Now, what do you mean by "verifying"?

2 A. If we are representing a bank and we are  
3 suing on a bank loan, then we have a copy of a  
4 promissory note, which is the debtor's written  
5 contract to pay the creditor. And we look at the  
6 promissory note to make sure the debtor signed it  
7 and is obligated under it. We will ask our client  
8 for a printout of the account history or the  
9 payment history to show what the bank, in this  
10 instance, calculates it's owed.

11 When we were doing the commercial  
12 collections, we would get copies of all the  
13 invoices. And if there was a credit application  
14 that might provide for a particular rate of  
15 interest or attorneys' fees, things like that, we  
16 would get the credit application. We would get  
17 the invoices, we would get signed charge sheets.

18 Q. Let me ask. Is it important to be able to  
19 look at a document regarding attorneys' fees?

20 A. Yes.

21 Q. Why?

22 A. Without a signed agreement for attorneys'  
23 fees, then the creditor is not entitled to recover  
24 attorneys' fees.

25 Q. Why is that?

1       A.           It's the law.

2       Q.           Is it a law that is subject to debate?

3                   MR. BOHYER:  Objection.  Legal  
4       conclusion.

5                   THE COURT:  Sustained.

6       BY MR. HEENAN:

7       Q.           Did I ask you to take a look at the  
8       circumstances and the documents in Mr.  
9       McCullough's case against Johnson Rodenburg?

10      A.           Yes, you did.

11      Q.           Did you agree to do that?

12      A.           Yes, I did.

13      Q.           And are you being compensated for your  
14      time and services?

15      A.           I am.

16      Q.           What is that compensation?

17      A.           \$225 an hour.

18      Q.           Is that any more or less than you charge  
19      any other client?

20      A.           At this time it's less.

21      Q.           You charge current clients more?

22      A.           Yes.

23      Q.           Is providing expert testimony a  
24      significant part of your practice?

25      A.           No.

1 Q. Is it even a small part of your practice?

2 A. Less than a small part of my practice.

3 Q. Did you review the documents that I sent  
4 you?

5 A. I did.

6 Q. And have you come to some conclusions,  
7 having reviewed those documents, about the facts  
8 and circumstances of this case?

9 A. Yes, I have.

10 Q. We started to, Mr. Patten, but I want --  
11 how is a lawsuit initiated?

12 A. A lawsuit is initiated by filing a  
13 Complaint, which is a piece of paper which sets  
14 out what the plaintiff alleges -- what facts the  
15 plaintiff alleges would support whatever remedy  
16 the plaintiff is asking for.

17 Q. What's the lawyer's role in filing a  
18 Complaint?

19 A. The lawyer's role is to engage in, I  
20 think, a reasonable or diligent effort to make  
21 sure the facts alleged are true, that there is a  
22 reasonable basis for the claims in the Complaint,  
23 and that lawyers are seeking the truth through the  
24 Complaint.

25 Q. In the context of a collection action, how

1 would a lawyer verify the information before  
2 filing a Complaint?

3 A. A lawyer would look at the credit  
4 application or the contract, if there was one. A  
5 lawyer would look at the documents that would  
6 prove or establish the claim. If there are  
7 invoices or charge slips or things like that, the  
8 lawyer would look at what claims are being  
9 asserted, if there was a legal basis for them.

10 Q. What do you mean by, "if there was a legal  
11 basis for them"?

12 A. You asked about attorneys' fees. So if  
13 there was a legal basis to claim for attorneys'  
14 fees, if you're asking for the correct or allowed  
15 amount of interest and that, generally, the amount  
16 claimed is accurately calculated.

17 Q. And how would you verify that the account  
18 claimed is accurate?

19 A. If you have an accounting -- for instance,  
20 I had an example about a bank. We would get  
21 printouts from the bank that shows the beginning  
22 loan balance and the payments that had been made  
23 and the interest that has accrued, and we see what  
24 the amount on that particular date is. We verify  
25 that the interest rate charges corresponds with

1       what is on the promissory note.

2                       When we were doing the commercial  
3       collections, we would look at the invoices and  
4       look at the statements and the bills that were  
5       mailed and make sure that they tracked and, again,  
6       that the interest rate was correct. And if there  
7       was a basis to claim attorneys' fees, we would  
8       verify there was a contract that would allow  
9       attorneys' fees.

10      Q.       And when you say verifying there's a  
11      contract, would you want to actually have the  
12      contract in the file?

13      A.       Yeah, we would always -- in the commercial  
14      collection cases, it would show up in two ways.  
15      One of them would be a credit application where  
16      the debtor signed it saying, I agree to pay all  
17      costs of collection, including attorneys' fees, or  
18      some language to that effect. Or they would sign  
19      an invoice that had language at the bottom of it  
20      by their signature that would allow for the  
21      recovery of attorneys' fees.

22      Q.       Would it be acceptable to just have your  
23      client say, Don't worry about it. There is a  
24      contract. Ask for attorneys' fees.

25      A.       And then ask for attorneys' fees?

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1 Q. Correct.

2 A. No.

3 Q. Why not?

4 A. Because we wouldn't have fulfilled our  
5 obligations to do a diligent research to show  
6 there was a basis for the claim we were making.

7 Q. Do you have an opinion about whether it's  
8 appropriate to rely solely on unsubstantiated  
9 information provided by a client?

10 MR. BOHYER: Objection. Legal  
11 conclusion.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14 BY MR. HEENAN:

15 Q. What is that opinion, sir?

16 A. That you cannot rely on unsubstantiated  
17 statements from your client.

18 Q. Why not?

19 A. Well, the rules are you have to make a  
20 diligent inquiry to determine the accuracy of what  
21 you're alleging in the Complaint. And if you  
22 simply adopt the unsubstantiated statements of  
23 your client, and it depends on the circumstance,  
24 of course, but if you just adopt the  
25 unsubstantiated statements of your client, I don't

1 think you fulfilled the obligations to make your  
2 diligent inquiry.

3 Q. So if you can't just rely on what the  
4 client's telling you, what do you need to do to  
5 satisfy that burden?

6 A. Well, it's going to depend on the  
7 circumstance, obviously. But if we are talking  
8 about debt collection, you need to see evidence of  
9 the debt.

10 Q. The actual documents?

11 A. Or a copy of it.

12 Q. As part of your collection practice, have  
13 you ever had occasion to prosecute for claims on  
14 assigned debt or purchased debt?

15 A. Not on a purchased debt. On assigned debt  
16 I have.

17 Q. Explain to the jury what that is.

18 A. What I mean by "assigned debt," if the  
19 debt has been assigned to somebody else, by the  
20 original creditor, assigned to somebody else to  
21 actually try and collect on that debt. And so the  
22 commercial collections that I did a long time ago  
23 were assigned to an entity called the Montana  
24 Association of Credit Management.

25 Q. Explain to the jury in the context of who

1       your client was and who they were getting the  
2       assignment from.

3       A.           My client then was called the Montana  
4       Association of Credit Management and it was a  
5       group of credit managers of different businesses  
6       around the state. And instead of each company  
7       doing their own collection, they created this  
8       association and they would assign their claims to  
9       the association.

10                   The association had a staff. The  
11       association would try to collect the debts on  
12       their own, and, at some point, then, the  
13       association would send the file to our office and  
14       we would file suit and collect it through the  
15       courts.

16       Q.           Okay. So when the association would send  
17       the file to you, what documents would be in there  
18       before you could file a lawsuit?

19       A.           There would be an actual written  
20       assignment, the original written assignment  
21       where --

22       Q.           Let's tell the jury what the written  
23       assignment is.

24       A.           It's a piece of paper that the creditor  
25       would sign, saying, I'm assigning this claim to

1 the Montana Association of Credit Management to  
2 collect. So that --

3 Q. Why is that important?

4 A. Well, it gives the Montana Association of  
5 Credit Management the authority to collect.

6 Q. Why is that important?

7 A. It's the law. Otherwise you have to  
8 either own -- you have to be a party to the  
9 contract or you have to, you know, have acquired  
10 the contract or you would have had to have the  
11 contract rights assigned to you before you could  
12 go and try to collect on it.

13 Q. So the original of the written assignment  
14 agreement is what you would require to have in  
15 your file prior to filing suit?

16 A. Yes.

17 Q. Any other documents you require to have in  
18 the file prior to filing a lawsuit?

19 A. If there was a credit application or a  
20 credit agreement, we would have that. We would  
21 have all the invoices. We would have all of the  
22 statements --

23 Q. Why would the credit agreement or contract  
24 be important?

25 A. Well, that would set out the terms of the

1 interest rate that could be charged and whether  
2 attorneys' fees could be charged, and it would set  
3 out the basic contract between the debtor and the  
4 creditor.

5 Q. Would it be appropriate to include in a  
6 lawsuit interest without any documents showing you  
7 what the rate is?

8 A. At the legal rate, yes.

9 Q. What is the legal rate?

10 A. The legal rate is 10 percent. So if it  
11 was more than 10 percent, you would need a written  
12 contract that allowed for more than 10 percent.

13 Q. Any other reason why it would be important  
14 to have the actual contract or a copy of it in  
15 your file?

16 A. To make sure that you were suing the right  
17 person, that the person that you were suing was  
18 the one who entered into the credit arrangement to  
19 begin with.

20 Q. Any other reasons?

21 A. Not that I can think of.

22 Q. Well, are there any other documents that  
23 you would want in your file prior to filing a  
24 lawsuit?

25 A. We would have the invoices so we could see

1       that in fact charges were made on an account or a  
2       description of what service or goods was charged  
3       and was subject to being collected.

4       Q.       Why would that be important?

5       A.       Again, sometimes, if the invoices were  
6       signed, and back then it was kind of the practice,  
7       then the invoices themselves might have the terms  
8       of the contract on it. So the invoice themselves  
9       may have the interest rate or the allowance of  
10      attorneys' fees.

11      Q.       Would it also show how much money the  
12      person owed that you were suing?

13      A.       It would show how much they charged at  
14      this point in time. Then we would also have the  
15      running account totals that would show the  
16      invoices were paid or not paid, what the total was  
17      adding up to.

18      Q.       How many of the invoices would you want in  
19      the file prior to filing a lawsuit?

20      A.       We would want all of the invoices for the  
21      time period that we were collecting on. So if the  
22      account was current through a certain date and  
23      went into default after that date, we would want  
24      the invoices after that date. So we would want  
25      all of the invoices that backed up the debt that

1 the creditor was claiming.

2 Q. What do you mean by backed up the debt  
3 that the creditor was claiming?

4 A. Would verify that. That was -- our  
5 reasonable inquiry into the facts was to look at  
6 the invoices and make sure they matched up with  
7 what the creditor claimed was on it.

8 Q. What if the creditor didn't provide you  
9 with any of those documents? Would it be  
10 appropriate to file a lawsuit?

11 A. No.

12 Q. Now, you've reviewed the depositions and  
13 the documents in this case.

14 A. Yes.

15 Q. You're aware that Johnson Rodenburg had no  
16 documentation, as you've just described, when they  
17 sued Mr. McCullough.

18 A. Yes.

19 Q. Do you have an opinion about whether that  
20 was appropriate?

21 A. Yes.

22 Q. What is your opinion?

23 A. That it was not appropriate.

24 Q. Why?

25 A. Because it did not -- it showed that

1 Johnson Rodenburg did not do its reasonable  
2 inquiry into the facts to show that indeed Mr.  
3 McCullough owed the money as claimed by Johnson,  
4 Rodenburg & Lauinger.

5 Q. Do you have an opinion about what Johnson  
6 Rodenburg should have done prior to suing Mr.  
7 McCullough?

8 A. Yes.

9 MR. BOHYER: Objection.  
10 Foundation.

11 May I voir dire the witness?

12 THE COURT: You may.

13 MR. BOHYER: Briefly, Your Honor.

14 THE COURT: Briefly.

15 VOIR DIRE

16 BY MR. BOHYER:

17 Q. Mr. Patten, in terms of the experience you  
18 have in collecting consumer debt, it's my  
19 understanding that you haven't done any of that  
20 for at least 20 years, or close to it.

21 A. On the collection side or on the --

22 Q. Yes, sir. On the collection side.

23 A. That would be correct.

24 Q. In fact, if I'm not mistaken, you haven't  
25 collected any credit card debt on behalf of banks



1 or credit unions, to your recollection, ever?

2 A. That's correct.

3 MR. BOHYER: I object on the  
4 basis of foundation, Your Honor.

5 THE COURT: Overruled.

6 BY MR. HEENAN:

7 Q. You can answer.

8 A. Could you re-ask the question?

9 MR. HEENAN: I think I'll have  
10 the court reporter read it back.

11 (Designated question is read.)

12 THE WITNESS: They should have  
13 obtained the documentation from the credit card  
14 issuer that showed the existence of a debt.

15 BY MR. HEENAN:

16 Q. What specific type of documentation should  
17 they have obtained?

18 A. Copies of the credit card statements that  
19 went out.

20 Q. Why would that be important?

21 A. Well, that would show that, as they  
22 alleged in their Complaint, the credit card  
23 statements went out -- the theory, the legal  
24 theory and legal principle that Johnson, Rodenburg  
25 & Lauinger sued Mr. McCullough under, and under my

1 experience in defending claims from that law firm,  
2 is what is called an account stated.

3 Q. What is that?

4 A. It's when you send out a statement  
5 periodically that shows either additional charges  
6 or payments made on an account. And when that  
7 goes out periodically without dispute, and there's  
8 activity on that account, payments and additional  
9 charges, then it entitles in this case the credit  
10 card company to a legal claim for the amount that  
11 is owed on that account.

12 So the monthly invoices or  
13 statements that would go to the borrower, Mr.  
14 McCullough in this case, would show his charges  
15 and his payments, would establish what is required  
16 for an account stated, which is the legal basis  
17 that they recovered on.

18 Q. To prosecute a claim under an account  
19 stated theory, would one statement be sufficient,  
20 two? How many would be sufficient before it's  
21 appropriate to sue someone under an account stated  
22 theory?

23 A. I think at least the last one that showed  
24 the dollar amount that they are suing under would  
25 be required. I think all of them would be

1 preferred.

2 Q. Why would all of them be preferred?

3 A. That way you could track whether the  
4 interest rate's being charged right and what the  
5 activity on the account was.

6 MR. HEENAN: Exhibit 67, please.

7 This is already in evidence, Your  
8 Honor.

9 THE COURT: Thank you.

10 BY MR. HEENAN:

11 Q. Have you reviewed this document, Mr.  
12 Patten?

13 A. I have.

14 Q. What is it?

15 A. It is an --

16 MR. HEENAN: Blow that up,  
17 please.

18 THE WITNESS: -- offer to place  
19 an account for litigation.

20 BY MR. HEENAN:

21 Q. And it's regarding my client, Mr.  
22 McCullough?

23 A. Yes.

24 MR. HEENAN: Thank you. And then  
25 the bottom part, please.

1 BY MR. HEENAN:

2 Q. Who's the offer between?

3 A. Johnson, Rodenburg & Lauinger and Collect  
4 America.

5 MR. HEENAN: This language,  
6 please.

7 BY MR. HEENAN:

8 Q. In this case, you're aware that Collect  
9 America, the client, told Johnson Rodenburg it  
10 made no warranty regarding the collectability of  
11 the accounts.

12 A. Yes.

13 Q. Do you have an opinion, in light of that  
14 disclaimer, whether it was appropriate for Johnson  
15 Rodenburg to sue Mr. McCullough without any  
16 documents?

17 MR. BOHYER: Objection. Legal  
18 conclusion.

19 THE COURT: Overruled.

20 THE WITNESS: Yes.

21 BY MR. HEENAN:

22 Q. What is your opinion, sir?

23 A. Actually, Mr. Heenan, you underlined  
24 something there and I think I should have  
25 underlined it before. Collect America makes no

1       warranty as to the accuracy or validity of the  
2       data provided.

3                       So it is telling Johnson,  
4       Rodenburg & Lauinger, we make no warranty as to  
5       the accuracy of the information we have given you,  
6       and they provide them with no documents to review.  
7       So Johnson, Rodenburg & Lauinger can't engage in a  
8       diligent research to verify that in fact the money  
9       is owed by Mr. McCullough. And it can't rely on  
10      what its client is telling them because the client  
11      is telling them that you can't rely on what we are  
12      telling you.

13                   MR. HEENAN: Exhibit 111-2,  
14      please. This is also in evidence, Your Honor.

15      BY MR. HEENAN:

16      Q.        You're aware that Johnson Rodenburg uses  
17      this Collection Master software?

18      A.        Yes.

19                   MR. HEENAN: Blow up that part,  
20      please.

21      BY MR. HEENAN:

22      Q.        You've reviewed these internal Johnson  
23      Rodenburg Collection Master notes as part of your  
24      review of this case?

25      A.        Yes.

1 Q. You're aware that Johnson Rodenburg  
2 internally knew this is the Collect America batch  
3 that we are having problems with?

4 A. Yes.

5 Q. Do you have an opinion, in light of that  
6 internal knowledge that Mr. McCullough's accounts  
7 were part of a batch of accounts that were  
8 problematic, whether it would be appropriate to  
9 sue Mr. McCullough without any evidence?

10 A. I don't recall and I don't remember,  
11 frankly, what the problems were that they were  
12 having with it. So I wouldn't have an opinion  
13 based on that particular light.

14 Q. That's very fair and I appreciate your  
15 honesty.

16 MR. HEENAN: Thank you.

17 BY MR. HEENAN:

18 Q. What is the statute of limitations?

19 A. For an account stated, it's five years.

20 Q. Lawyers kind of throw around the term  
21 statute of limitations. What does it mean in  
22 layman's terms?

23 A. It means that after in this case five  
24 years has run from the time -- you have to file  
25 suit within five years from when the last payment

1 was made, or else it's too late to file suit.

2 Q. And that's the law.

3 A. Yes.

4 Q. What is a lawyer's obligations regarding  
5 the statute of limitations in terms of an inquiry  
6 or due diligence prior to filing a lawsuit?

7 A. To make an inquiry to make sure that the  
8 statute of limitations has not run.

9 Q. And what would that inquiry consist of?

10 A. Looking at, for example, in looking at the  
11 invoices or the statement of account with the  
12 monthly invoices that came in, when the last  
13 payment was made.

14 Q. Why is it important to know when the last  
15 payment was made?

16 A. Because that's what starts the five-year  
17 clock. So if you've seen on the credit card  
18 statements, they always say at the bottom or  
19 someplace on there, Payment, X number of dollars,  
20 Thank you. If you look through all of them, you  
21 find that last payment that was made and you  
22 calculate five years from that date.

23 Q. Do you have an opinion about whether it  
24 would be appropriate for a lawyer -- strike that.

25 Do you have an opinion in the

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1 context of this case whether it was appropriate  
2 for Johnson Rodenburg to sue Mr. McCullough based  
3 on an e-mail from someone at CACV stating that a  
4 payment had been made in 2004, without any  
5 documentation?

6 A. Yes, I have an opinion.

7 Q. What is that opinion?

8 A. It is not appropriate.

9 Q. Why not?

10 A. Because they don't know. And first of  
11 all, CACV has already --

12 MR. BOHYER: Your Honor, I object  
13 to this line of nondisclosure. I don't believe  
14 this is in the report.

15 THE COURT: Was this disclosed,  
16 Mr. Heenan?

17 MR. BOHYER: I may have  
18 overlooked it, but I don't see it.

19 MR. HEENAN: Your Honor, I  
20 thought so. I thought Mr. Patten spoke to  
21 statute-of-limitations issues.

22 MR. BOHYER: I mean with  
23 specifics with respect to the question asked.  
24 The statute of limitations is discussed in there,  
25 but this opinion is not.



1 THE COURT: If you could show me,  
2 Mr. Heenan, where it's disclosed, then I will  
3 allow you to continue. Otherwise the objection  
4 is sustained.

5 MR. HEENAN: I will just move on,  
6 Your Honor.

7 THE COURT: Okay.

8 MR. HEENAN: Exhibit 3, please.

9 BY MR. HEENAN:

10 Q. You're aware Mr. McCullough filed a pro se  
11 answer to this lawsuit?

12 A. Yes.

13 Q. What does pro se mean?

14 A. Filed it without an attorney.

15 Q. And you're aware that Mr. McCullough --

16 MR. HEENAN: Number 1, please.

17 BY MR. HEENAN:

18 Q. -- asserted, The statute of limitations is  
19 up. I've not had any dealings with any credit  
20 card in well over eight and a half years.

21 A. Yes.

22 Q. Do you have an opinion about what a lawyer  
23 should have done receiving a pro se answer like  
24 this specifically saying that the statute of  
25 limitations is up, haven't had any dealings in

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1 eight and a half years?

2 MR. BOHYER: Objection, Your  
3 Honor, nondisclosure. I don't believe this is in  
4 the report either.

5 THE COURT: Mr. Heenan, can you  
6 tell me where I could find that?

7 MR. HEENAN: Yes, Your Honor. We  
8 are moving on to the requests for admission,  
9 where they ask Mr. McCullough to admit that he  
10 had never --

11 THE COURT: Let's talk about the  
12 question that is pending, which is a dispute upon  
13 receiving an answer such as the exhibit that is  
14 before the jury now. That's the specific  
15 question to which objection has been made.

16 MR. HEENAN: I will move on to  
17 the request for admission.

18 THE COURT: Okay.

19 MR. HEENAN: Thank you, Your  
20 Honor. Exhibit 4-2, please.

21 BY MR. HEENAN:

22 Q. Have you reviewed this document, Mr.  
23 Patten?

24 A. Yes, I have.

25 Q. What is it?

1       A.           Requests for admission.

2       Q.           That were served on Mr. McCullough?

3       A.           Yes.

4       Q.           While he was defending himself?

5       A.           Yes.

6       Q.           What are requests for admission?

7       A.           That is part of the legal process whereby  
8       a party can ask another party to admit certain  
9       facts.

10      Q.           What is the purpose for a request for  
11      admission?

12      A.           Well, it's to get the facts admitted so  
13      they are no longer in dispute. In this case, and  
14      in my experience with the Johnson, Rodenburg &  
15      Lauinger firm, they use requests for admission in  
16      order to position themselves to file a summary  
17      judgement motion.

18      Q.           Why would they want to position themselves  
19      to file a summary judgement motion?

20      A.           That, then, avoids a trial and you  
21      essentially deal with the case -- you show there  
22      are no facts in dispute and that you're entitled  
23      to a judgement as a matter of law and you avoid  
24      the time and trouble of a trial.

25      Q.           Is it also a way to win a case without any

1 evidence?

2 A. Yes.

3 Q. How so?

4 A. If the facts are admitted, then you don't  
5 have to prove them.

6 Q. I want to direct your attention, Mr.  
7 Patten, to this initial language. Have you  
8 reviewed this language before, Mr. Patten?

9 A. I have.

10 Q. Have you seen it other places?

11 A. I have.

12 Q. In what places have you seen it?

13 A. I've seen it in all of the requests for  
14 admission that I receive on behalf of my clients  
15 from the -- I know from Mr. Dunker, Mr. Dendy. I  
16 don't know if the other attorneys use the same  
17 language, but I know Mr. Dendy's forms have the  
18 same language.

19 Q. Do you have an opinion about whether this  
20 form language is appropriate?

21 A. Yes, I do.

22 MR. BOHYER: Objection, Your  
23 Honor. Legal conclusion.

24 THE COURT: Overruled.

25

1 BY MR. HEENAN:

2 Q. What is your opinion, sir?

3 A. That it's not appropriate.

4 Q. Why?

5 A. In that it fails to notify Mr. McCullough  
6 or the defendant of the consequences of not  
7 answering, of not denying the requests for  
8 admission within 30 days, which is that they are  
9 then deemed admitted.

10 Q. Why is that important?

11 A. Well, the instructions that you've blown  
12 up there appear to tell Mr. McCullough all of his  
13 requirements in dealing with these, but they leave  
14 out sort of the most central one. That is,  
15 admissions will be deemed admitted if not denied.

16 Q. Is this language confusing to you as an  
17 experienced lawyer?

18 A. Kind of.

19 Q. Is it your opinion that it's not so much  
20 what it says but what it doesn't say?

21 A. Yes.

22 Q. That would be what?

23 A. It doesn't say that if you don't deny the  
24 admissions in 30 days they would be deemed  
25 admitted.

1 Q. You've reviewed -- well, let me ask you.  
2 You were asked to offer opinions with respect to  
3 Johnson Rodenburg's conduct as a debt collector  
4 under the federal Fair Debt Collection Act?

5 A. Yes.

6 Q. One of the issues you looked at was this  
7 requests for admission that Johnson Rodenburg sent  
8 out to Mr. McCullough, sends out to other people  
9 in Montana. Correct?

10 A. Yes.

11 Q. And you rendered opinions regarding  
12 whether that's appropriate.

13 A. Yes.

14 Q. What were those opinions?

15 MR. BOHYER: Objection. Any  
16 opinions with respect to the FDCPA are irrelevant  
17 at this point.

18 THE COURT: Sustained.

19 BY MR. HEENAN:

20 Q. You're aware that since you rendered your  
21 opinions Judge Ostby has rendered some opinions.  
22 Isn't that true?

23 A. Yes.

24 Q. They are now the law of the case. Right?

25 A. Yes.

1 MR. BOHYER: Objection. Legal  
2 conclusion. Invades the province of the Court.

3 THE COURT: Overruled. The jury  
4 has been told that, Mr. Bohyer.

5 Move along, Mr. Heenan.

6 BY MR. HEENAN:

7 Q. You're aware the judge concluded this was  
8 an unfair and deceptive practice by Johnson  
9 Rodenburg?

10 A. Yes.

11 Q. Do you agree with the Court's decision?

12 A. Yes.

13 MR. BOHYER: Your Honor, I object  
14 to that. That's not what the Court has advised,  
15 and I move to strike that specific statement and  
16 that the jury be instructed to disregard it.

17 THE COURT: Well, I'm going to  
18 sustain that and move to strike. Whether or not  
19 the expert witness agrees with what the Court has  
20 done, the jury will be instructed as to the  
21 Court's rulings. So I'll strike that.

22 And could you move along, please.

23 MR. HEENAN: Thank you, Your  
24 Honor.

25 Page two, please, of Exhibit 4.

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1 BY MR. HEENAN:

2 Q. I want to direct your attention to  
3 paragraph 21 on these requests for admission.

4 You're aware internally, at the  
5 time these requests for admission were sent to Mr.  
6 McCullough, Johnson Rodenburg had received  
7 information from its own client saying there had  
8 not in fact been a payment made on June 30, 2004?

9 A. Yes.

10 Q. Do you have an opinion, in light of  
11 Johnson Rodenburg's internal knowledge from their  
12 client that this information was not in fact true,  
13 whether it was appropriate to ask Mr. McCullough  
14 to admit it to be true?

15 A. Yes.

16 Q. What is your opinion?

17 A. That it was not appropriate.

18 Q. Why not?

19 A. They knew that it was not true and it is  
20 an abuse of the rules that we operate under, I  
21 think, to ask him to admit something that they  
22 knew was not true, that went to the heart of the  
23 case.

24 Q. Is it zealous advocacy to ask someone to  
25 admit something the lawyer knows to be false?



1 MR. BOHYER: I object. This  
2 violates an order with respect to the rules we  
3 discussed yesterday.

4 THE COURT: Overruled. I don't  
5 think it has been specified. You may  
6 cross-examine about what he is referring to.

7 Please rephrase or re-ask the  
8 question.

9 MR. HEENAN: Thank you.

10 BY MR. HEENAN:

11 Q. Is it zealous advocacy for the attorney to  
12 ask the opposing party to admit something that  
13 they know or should know to be false?

14 MR. BOHYER: Objection, Your  
15 Honor, nondisclosure.

16 THE COURT: Mr. Heenan, was this  
17 disclosed?

18 MR. HEENAN: I believe so, Your  
19 Honor. Right on page four, top paragraph. I can  
20 read it to the Court if you want me to.

21 THE COURT: I have it. I  
22 overrule the objection.

23 THE WITNESS: It's not zealous  
24 advocacy.

25

1 BY MR. HEENAN:

2 Q. Why not?

3 A. Because there is no factual basis for it.

4 Q. What do you mean by that?

5 A. Johnson, Rodenburg & Lauinger knew that  
6 there had not been a payment on June 30. So it's  
7 not -- it's not advocacy to use the discovery as a  
8 means to get that admitted inadvertently, maybe,  
9 by Mr. McCullough by not answering the request for  
10 admissions within 30 days.

11 The lawyers are required to pursue  
12 the truth. That is the rule that we operate  
13 under. And this is not pursuing the truth. This  
14 is doing the opposite.

15 MR. HEENAN: Thank you. Exhibit  
16 13-1, please.

17 BY MR. HEENAN:

18 Q. Mr. Patten, you've reviewed this e-mail  
19 from Charles Dendy after Mr. McCullough retained  
20 counsel as part of your review of this case?

21 A. Yes.

22 Q. I want to focus your attention to this  
23 middle paragraph. What is Mr. Dendy requesting of  
24 his client?

25 A. He is requesting the documents that he

1       should have requested before the suit was filed.

2       Q.       Do you have an opinion about whether it's  
3       appropriate to wait for someone to retain a lawyer  
4       to request the documents that you should have  
5       asked for in the beginning?

6       A.       Yes.

7       Q.       What is your opinion?

8       A.       That you should request the documents  
9       before you file suit so you know there is a basis  
10      for your suit, and not afterwards.

11                       MR. HEENAN: Thank you.

12      BY MR. HEENAN:

13      Q.       What is a dismissal with prejudice?

14      A.       That means the case is dismissed and can  
15      never be refiled, and whatever claims are alleged  
16      in the Complaint are barred from being litigated  
17      again.

18      Q.       Who is the dismissal with prejudice good  
19      for?

20      A.       The defendant.

21      Q.       Why is that?

22      A.       It keeps the case from being refiled. So  
23      if it's a credit card collection, then it keeps  
24      the defendant from having to ever litigate again,  
25      whether he's liable to the credit card company or

1       whoever.

2       Q.       Do you have an opinion, Mr. Patten, about  
3       whether the conduct of Johnson Rodenburg towards  
4       Mr. McCullough was isolated?

5       A.       Yes.

6       Q.       What is your opinion, sir?

7       A.       That it was not isolated.

8                       MR. BOHYER:  Objection.  This was  
9       not disclosed, Your Honor.

10                    THE COURT:  Mr. Heenan?

11                    MR. HEENAN:  It is absolutely  
12       disclosed, Your Honor.  It's the heart of Mr.  
13       Patten's report.

14                    THE COURT:  Can you show me  
15       where?

16                    MR. HEENAN:  Page six.  Well,  
17       starting at page two, third paragraph, going  
18       through page three --

19                    THE COURT:  I overrule the  
20       objection.

21       BY MR. HEENAN:

22       Q.       Do you remember the question?

23                    THE WITNESS:  Could you read it  
24       back?

25                    (Designated question is read.)

1

2 BY MR. HEENAN:

3 Q. Why do you say that?

4 A. I reviewed a number of files in my office  
5 where my clients were sued by Johnson, Rodenburg &  
6 Lauinger, and I thought about other cases that  
7 I've had with that firm and there's an obvious  
8 pattern, in my experience with dealing with the  
9 firm. And that is, they can't prove their case  
10 because they don't ever, or rarely, are they able  
11 to get the documents that back up their claim.

12 Q. You also reviewed, as part of your review  
13 of this case, the depositions of Ms. Lauinger and  
14 Mr. Dendy with respect to what documents they have  
15 obtained before filing suit in other cases.

16 A. Yes.

17 Q. If the evidence is that Johnson Rodenburg  
18 had no more or no less documentation or evidence  
19 prior to suing Mr. McCullough than they did in all  
20 the other lawsuits that they filed, do you have an  
21 opinion about whether that's an appropriate  
22 business practice?

23 A. Yes.

24 Q. What is your opinion, sir?

25 A. It's not an appropriate business practice.

1 Q. Why not?

2 A. The documents, and it was -- I don't  
3 remember whose deposition. There was a deposition  
4 of an attorney out of Helena that I read, and as  
5 between the Lisa Lauinger and Mr. Dendy, I don't  
6 remember which one, but the same statistic came up  
7 in both depositions. And that is, of all the  
8 cases that are filed, approximately 90 percent  
9 result in a default judgement. Approximately five  
10 percent the defendant appears with an attorney and  
11 approximately five percent the defendant appears  
12 pro se, as Mr. McCullough did in this case.

13 And so if a substantial number of  
14 cases, in my experience, they can't prove because  
15 they don't have the documentation for, if that's  
16 applied to the 90 percent of the default  
17 judgements, then there's a large number of default  
18 judgements that they couldn't and wouldn't be able  
19 to prove.

20 Q. You used some terminology in terms of how  
21 you characterized Johnson Rodenburg's business  
22 model. What is it, sir?

23 A. I think it's a factory.

24 Q. What do you mean by "a factory"?

25 A. I think it's a factory that the product of

1 the factory is Complaints filed in court. And  
2 it's mass-produced.

3 Q. What do you mean "mass-produced"?

4 A. I think in Mr. Dendy's deposition he  
5 testified that the effective number of Complaints  
6 filed a year is about 50 a day out of that office.  
7 So they are mass-producing Complaints,  
8 mass-producing default judgements, most of which  
9 don't have the documentation to back them up.

10 Q. Why would they do that, if you know?

11 MR. BOHYER: Objection.  
12 Speculation, Your Honor.

13 THE COURT: He said, "if you  
14 know." I will overrule it.

15 If you know, sir.

16 THE WITNESS: I can only  
17 speculate.

18 BY MR. HEENAN:

19 Q. Do you have an opinion with respect to  
20 whether that's a lucrative business model?

21 MR. BOHYER: Objection.  
22 Relevance.

23 THE COURT: Overruled.

24 BY MR. HEENAN:

25 Q. You can answer.

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1       A.           I don't know.

2       Q.           What about with respect to Johnson  
3       Rodenburg's use of non-attorney staff? Do you  
4       have an opinion about -- well, one, lawyers use  
5       non-lawyers for help, right?

6       A.           Yes.

7       Q.           Do you have an opinion about whether the  
8       way Johnson Rodenburg uses non-lawyers is  
9       appropriate?

10      A.           Well, yeah.

11      Q.           What is it?

12      A.           I don't think there is anything  
13      inappropriate by using non-lawyers. But I think  
14      the lawyers have to pay attention to what it is  
15      that they're signing off on, and so I think the  
16      lawyers have to review the documents and make sure  
17      that, in the case of Complaints, they are well  
18      grounded and in fact there has been some diligent  
19      effort to corroborate the claims being made. And  
20      they can't avoid that obligation and they can't  
21      let their staff avoid that obligation.

22      Q.           As part of your review of this case, you  
23      became aware of Johnson Rodenburg's use of this  
24      Collection Master software. Correct?

25      A.           Yes.



1 Q. And assume the evidence is that the  
2 Collection Master software inputs this  
3 information, last payment date, person's name,  
4 interest rate. Is it an appropriate review for a  
5 Montana lawyer to look at those inputs without  
6 documentation and sign a lawsuit?

7 A. No.

8 Q. Why not?

9 A. Because you're not engaged in any diligent  
10 review to make sure that there's a basis for the  
11 claim. You're just taking information that  
12 somebody's given to you and they have told you  
13 that it's not reliable and plug it into a  
14 Complaint.

15 Q. What if they don't tell you it's not  
16 reliable? What if the client doesn't say  
17 anything? Is it appropriate then?

18 A. No. I still think you need to look at the  
19 documents to know that in fact Mr. McCullough owed  
20 X number of dollars through the use of whatever  
21 credit card it was, Chase or whatever, and that  
22 his last payment was on a certain date.

23 MR. HEENAN: Thank you, Mr.  
24 Patten.

25 THE COURT: Let's take a short

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1 break. It's been almost an hour and a half.

2 We will be in recess for about 10  
3 or 15 minutes. And then I would like to see  
4 counsel, please.

5 (The following took place in  
6 chambers:)

7 THE COURT: Before  
8 cross-examination, I wanted to deal with the  
9 question of the rules. I had mentioned yesterday  
10 my concern about making clear that the Rules of  
11 Professional Conduct do not set the standard  
12 here. This is not even a malpractice action.  
13 This is action under the three remaining counts.  
14 And the Rules of Professional Conduct, I think we  
15 can all agree, don't form the standard for  
16 proving violation of any of those.

17 Now, I don't know what rules  
18 specifically the witness was referring to when he  
19 was talking about them, but I ask that you  
20 admonish him that it is the ruling of the Court  
21 and that the Rules of Professional Conduct do not  
22 form the standard here. Now, he can talk about  
23 his understanding of what attorneys' obligations  
24 are.

25 MR. HEENAN: It's okay to talk to

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1 him? He is under oath now as a witness. I don't  
2 want to invade that.

3 THE COURT: Yeah. You can open  
4 the door to it, and you might. But I'm just  
5 saying, be cautious about it because I have  
6 indicated that --

7 MR. HEENAN: I should try to  
8 abide by Your Honor's ruling. I didn't want to  
9 go into that.

10 MR. BOHYER: I appreciate that,  
11 but the word zealous appears only in the Rules of  
12 Professional Conduct.

13 THE COURT: It appears in  
14 Webster's Dictionary and a lot of others too.

15 MR. BOHYER: But in the context  
16 of what we are dealing with, and I don't mean to  
17 argue with the Court, but I have got to be given  
18 a little latitude without it being suggested I'm  
19 opening the door.

20 He has remarked about a diligent  
21 inquiry. That appears in Rule 11. That's what  
22 we are talking about here. And with Your Honor  
23 suggesting that I might be opening the door to  
24 it, I've got to be given some latitude without  
25 being, on redirect, saying, well, you're opening

1 the door on everything.

2 THE COURT: I think you're  
3 confusing the Rules of Professional Conduct and  
4 the Rules of Civil Procedure. I'm talking about  
5 the Rules of Professional Conduct. Rule 11 is in  
6 the Rules of Civil Procedure.

7 I'm not limiting your latitude.  
8 I was just trying to follow up on your objection  
9 and my own statement yesterday with respect to  
10 being cautious about testimony about violation of  
11 the Rules of Professional Conduct.

12 MR. BOHYER: I will avoid the  
13 Rules of Professional Conduct, Your Honor.

14 MR. HEENAN: Would you mind, Your  
15 Honor, telling me what I need to say to Mr.  
16 Patten?

17 THE COURT: That the Court has  
18 ruled that the Rules of Professional Conduct do  
19 not set the governing standard for violation of  
20 any of the causes of action pled.

21 MR. HEENAN: So he can just talk  
22 about what his own --

23 THE COURT: His own opinion is.

24 MR. HEENAN: His own standard of  
25 practice.

1 THE COURT: Yes, and his  
2 testimony based on his knowledge, education and  
3 experience about what the standard of practice  
4 is.

5 MR. HEENAN: Understood.

6 THE COURT: Thank you.

7 MR. SIMPSON: I have one question  
8 on an unrelated issue. I had served a subpoena  
9 upon Dr. Yelvington for attendance at trial. I  
10 got a call, or rather my office got a call, from  
11 him late yesterday. I called him back. He is  
12 concerned he has a very busy schedule.

13 He has one document produced by  
14 plaintiff's counsel during the case. I believe  
15 the document is one to which objection has been  
16 raised. And I'm wondering if there's a way that  
17 plaintiff's counsel might stipulate without  
18 admission of that document through Dr. McElhinney  
19 to avoid Dr. Yelvington having to testify.

20 MR. HEENAN: My whole position is  
21 Dr. McElhinney can talk about the medical  
22 records, Dr. Veraldi can talk about medical  
23 records, Mr. McCullough can be asked about them,  
24 but I just don't think they are evidence that  
25 gets to go in to the jury. I would maintain that

1 objection and so I won't stipulate to it being  
2 admitted.

3 THE COURT: What document is it?

4 MR. SIMPSON: A medical record.

5 I don't have the date in front of me. It was a  
6 medical record that was produced by Dr.

7 Yelvington following his psychiatric clinical  
8 interview of Mr. McCullough in the nineties.

9 THE COURT: Is this that one that  
10 he administered the test that is a series of  
11 questions?

12 MR. SIMPSON: No. That was  
13 administered by Dr. McElhinney. This was a  
14 record upon which Dr. McElhinney relied, or one  
15 of the records that he relied upon, in forming  
16 his opinion.

17 My purpose in bringing Dr.  
18 Yelvington here was to lay more foundation for it  
19 and establish that it's not hearsay and that we  
20 could move the Court for its admission that way.

21 THE COURT: Well, apparently  
22 there is not a stipulation and I can't admit  
23 documents without foundation. So you will have  
24 to make the decision that you think is right.

25 MR. SIMPSON: Okay.

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1 MR. HEENAN: Thank you.

2 MR. BOHYER: Thank you.

3 (Brief recess. )

4 THE COURT: You may

5 cross-examine.

6 MR. BOHYER: Thank you, Your

7 Honor.

8 CROSS-EXAMINATION

9 BY MR. BOHYER:

10 Q. Mr. Patten, good morning.

11 A. Hi.

12 Q. You and I know each other from years past,  
13 correct?

14 A. That's correct.

15 Q. I think your exchange was that I think  
16 when we last saw each other, you didn't have gray  
17 hair and I had hair.

18 A. I won't talk about you, but I know I  
19 didn't have gray hair.

20 Q. I'm trying to recall. I don't think you  
21 and I ever ran into each other in these types of  
22 cases at all. Am I accurate?

23 A. Yes.

24 Q. As you might imagine, I have quite a few  
25 areas to go over, so please bear with me.

1 I think the very first thing I  
2 wanted to go over was one of the opinions that you  
3 expressed to the jury about Johnson, Rodenburg &  
4 Lauinger sending requests for admission to an  
5 opponent and not specifying to them what the risk  
6 is if the requests for admission aren't answered.  
7 Correct?

8 A. Yes.

9 Q. The actual requests that were provided in  
10 this case, the document that was blown up to you  
11 at the end, says, These requests will be deemed  
12 admitted if not answered, doesn't it?

13 A. I recall that it did.

14 Q. So at least in that respect, then, Mr.  
15 McCullough is advised, hey, if you don't answer  
16 these, they are going to be deemed admitted.  
17 True?

18 A. Yes.

19 Q. Now, I also understand, and for the jury's  
20 purpose here, these documents, the requests for  
21 admission, those are tools that lawyers use to  
22 gain information about their opponent's case and  
23 for their client's case. Is that a fair  
24 statement?

25 A. In part, yes.



1 Q. In addition to being tools, those are the  
2 tools that are allowed by law for a party, whether  
3 it's Mr. McCullough or Johnson, Rodenburg &  
4 Lauinger to get that information. Correct?

5 A. Yes. Yes.

6 Q. And the use of discovery requests is part  
7 of an attorney's investigation into a case. Would  
8 you agree with that?

9 A. Yes.

10 Q. Now, as I understand it, at least from  
11 listening to the direct exam, one of your big  
12 issues with those requests for admission is that  
13 it didn't tell them, didn't tell him specifically,  
14 what's going to happen if he doesn't answer these  
15 discovery requests. Fair statement?

16 A. Within 30 days.

17 Q. Okay. Correct me if I'm wrong. It was  
18 always because they didn't tell him what the  
19 effect was. Say, look, Mr. McCullough, if you  
20 don't do this, the Court's going to deem these  
21 things admitted. That's a big issue in your mind,  
22 true?

23 A. The way that that instruction paragraph is  
24 worded is a big issue in my mind, yes.

25 Q. You'll agree with me there's nothing in

1 the Rule 36 that mandates that one party, when it  
2 sends requests for admission to the other, there's  
3 nothing in there, the law doesn't require that the  
4 instruction be given to the opponent.

5 A. Rule 36 does not, no.

6 Q. And that's the rule that deals with  
7 requests for admission.

8 A. Yes.

9 Q. Would you agree with me that my client is  
10 entitled to rely upon Rule 36?

11 A. I think your client is entitled to  
12 appropriately put out instructions on Rule 36.

13 Q. And one is, answer within 30 days. Two  
14 is, here's the effect if you don't answer.

15 A. Yes.

16 Q. Okay.

17 MR. BOHYER: John, I want to show  
18 you this, first.

19 Judge, may I approach the witness  
20 with a discovery request from the plaintiff, not  
21 to admit into evidence but for purposes of  
22 cross-examination?

23 MR. HEENAN: May I see that?

24 MR. BOHYER: May I approach?

25 THE COURT: There is no question

1 pending. I'm a little confused.

2 MR. BOHYER: I'm about to ask the  
3 question, but I want him to review the document  
4 first. It's dealing with requests for admission.

5 THE COURT: Okay. You may.

6 MR. BOHYER: Thank you.

7 BY MR. BOHYER:

8 Q. Mr. Patten, I've handed you some of the  
9 discovery requests that Mr. McCullough in this  
10 case has served upon my client. Do you see those?

11 A. Yes.

12 Q. All right. Now, Mr. Heenan went through  
13 with you in some detail the instruction that my  
14 client, when they sent the requests for admission  
15 to Mr. McCullough, had given to Mr. McCullough,  
16 okay?

17 Would you please tell the jury --  
18 let me rephrase that.

19 It's true, is it not, when Mr.  
20 McCullough and his counsel served requests for  
21 admission on my client in this case, my client  
22 wasn't advised of what the effect is if they don't  
23 answer within 30 days?

24 A. The service was on Kelly Gallinger and  
25 Matthew Tourtellotte, attorneys. And there is no

1 instruction, no statement, as to the consequence  
2 of not answering.

3 Q. So the opinions that you just gave the  
4 jury that it's not proper for an attorney to send  
5 out requests for admission to another party  
6 without advising the other party of the  
7 consequence is wrong. Isn't that what you said?

8 A. No.

9 Q. Okay. I will let the jury rely upon its  
10 recollection.

11 Again, you will agree with me, at  
12 least in the context of the discovery sent to my  
13 client, they weren't provided any warning with  
14 respect to what the effect was.

15 A. I think you're overlooking that Mr.  
16 Heenan's discovery went to attorneys and the  
17 Johnson, Rodenburg & Lauinger discovery went to  
18 Mr. McCullough, who was not an attorney.

19 Q. Mr. Patten, the Rules of Civil Procedure  
20 apply to parties, don't they?

21 A. Yes, they do.

22 Q. There aren't different obligations?

23 A. Under the Rules of Civil Procedure?

24 Q. Yes, sir.

25 A. That's correct.

1 Q. So if I'm hearing you right, then, what  
2 you're saying is, there has to be a different  
3 standard imposed if somebody knows another party  
4 is not represented by a lawyer.

5 A. Yes.

6 Q. That's not required anywhere in the rules,  
7 though, is it?

8 A. Which rules?

9 Q. Rule 36.

10 A. No.

11 Q. There was also some discussion, Mr.  
12 Patten, about our client getting requests for  
13 admission and then, if the other party doesn't  
14 answer them, having them deemed admitted. Do you  
15 remember that series of questions?

16 A. Yes.

17 Q. That actually didn't happen in this case,  
18 did it?

19 A. I seem to recall seeing a motion for  
20 summary judgement in this case.

21 Q. So are you operating on the assumption  
22 here that Mr. McCullough did not answer the  
23 requests for admission and that they were deemed  
24 admitted?

25 A. My recollection from what I reviewed of

1 the file is that there was a motion for summary  
2 judgement based on the, in part, on the  
3 admissions.

4 Q. Let me make sure I understand this and so  
5 the jury is clear.

6 Is it your assumption that our  
7 client filed a motion for summary judgement on the  
8 *CACV v. McCullough* case?

9 A. I recollect that they did.

10 Q. Assume that that didn't happen and that  
11 they dismissed the case.

12 A. Okay.

13 Q. Would that change your opinions at all?

14 A. In connection with Mr. McCullough?

15 Q. Yes, sir.

16 A. It wouldn't change -- the reason the case  
17 was dismissed, I don't think the case would have  
18 been dismissed had Mr. McCullough not obtained  
19 counsel who forced the issue.

20 Q. Let me get back to the line of questioning  
21 I was on. It had to do with the requests for  
22 admission. And you've provided the jury with a  
23 bunch of opinions about the requests for  
24 admission.

25 What I want to know is, are you

1 operating on the assumption that the requests for  
2 admission against Mr. McCullough were not answered  
3 and then deemed admitted by my client, and then  
4 used to obtain relief from the Court?

5 A. I think that's what your client was  
6 seeking to do.

7 Q. Okay. That doesn't quite answer my  
8 question. My question is, are you assuming for  
9 your opinion, Mr. Patten, that my client served  
10 the requests for admission and that Mr. McCullough  
11 did not answer them, and that my client, then,  
12 tried to use those unanswered requests to obtain  
13 relief?

14 A. I've expressed a number of opinions, so my  
15 opinion is that it's improper to send out those  
16 requests for admission with the instructions as  
17 stated without anything more. So with respect to  
18 that opinion, then, I'm not assuming they were  
19 deemed admitted in this instance, although my  
20 recollection is that they were. And I might be  
21 wrong on that. But my recollection is there was a  
22 summary judgement motion that was filed.

23 Q. So with respect to the investigation,  
24 then, that you performed for purposes of  
25 formulating your opinion, your investigation led

1       you to believe that these requests for admission  
2       were served upon Mr. McCullough, that they weren't  
3       answered by him, that they were deemed admitted by  
4       my client and that my client, then, sought  
5       affirmative relief from the Court in the  
6       underlying case. Is that fair?

7       A.       Ask the beginning part of that question  
8       again.

9                       MR. BOHYER: Would you read it  
10       back?

11                      (Designated question is read.)

12                      THE WITNESS: No. Let me try to  
13       make it clear, and I apologize if I'm confusing  
14       things. I think that it's improper to send out  
15       the requests for admission with those particular  
16       instructions attached to it, without regard to  
17       what happens later. I think that's inappropriate  
18       to do that. It's also inappropriate to use the  
19       deemed admissions to get a summary judgement.

20       BY MR. BOHYER:

21       Q.       I appreciate that.

22                      MR. BOHYER: But Your Honor, I'm  
23       going to ask that the witness be instructed to  
24       answer the question.

25                      THE COURT: I think he answered

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1       it three times already and you've asked him again  
2       and again, so I'm going to ask you to move on.  
3       He told you he thought that's what happened. He  
4       told you more than once.

5                       MR. BOHYER: You're assuming that  
6       happened. Very well.

7                       May I approach the witness?

8                       THE COURT: For what purpose?

9                       MR. BOHYER: To show him the  
10       requests for admission that were answered.

11                      THE COURT: Yes.

12       BY MR. BOHYER:

13       Q.       Have you had a chance to look at those,  
14       Mr. Patten?

15       A.       Yes.

16       Q.       In fact, then, in the case that we are  
17       here on, the requests for admission that my client  
18       sent to Mr. McCullough were actually answered by  
19       Mr. McCullough, weren't they?

20       A.       Through his counsel, yes.

21       Q.       They were signed by him too, were they  
22       not?

23       A.       Yes.

24       Q.       Okay. So the testimony that you gave  
25       about sending out requests for admission to try to

1 get a default judgement, that didn't happen here,  
2 did it?

3 A. No.

4 Q. You can hand those back to me. Oh,  
5 actually, one more question on these, sir. I will  
6 have to give you the actual request.

7 Would you take a look at Request  
8 For Admission Number 6, please.

9 A. Yes.

10 Q. And please read to the jury what it is  
11 that was asked.

12 A. Defendant Timothy McCollough used said  
13 Chase Manhattan credit card to purchase goods and  
14 services.

15 Q. Okay. Now, he answered that one, didn't  
16 he?

17 A. Yes.

18 Q. And please tell the jury what he said.

19 A. He admitted.

20 Q. He admitted that he used the card.

21 A. Yeah.

22 Q. Okay. Thanks. For purposes of putting  
23 together your expert opinions, you conducted your  
24 own investigation, correct?

25 A. I looked at a number of documents.

1 Q. You were provided a number of documents by  
2 Mr. McCullough's counsel.

3 A. Yes.

4 Q. In addition to that, prior to giving  
5 opinions here, you also met with Mr. McCullough's  
6 attorney, didn't you?

7 A. Yes.

8 Q. One time?

9 A. One or two times. I think it was one.

10 Q. How about three or four?

11 A. In total?

12 Q. Yes, sir.

13 A. Yes, I think that would be right.

14 Q. Could you give the jury an idea how much  
15 time you had to spend with Mr. McCullough's  
16 attorney before you came up with the opinions?

17 A. I recollect that I met with Mr. Heenan and  
18 he asked me to render an opinion. We talked about  
19 the case. He left me with a volume of material.  
20 I don't remember how much time was involved, maybe  
21 an hour, hour and a half.

22 Q. Was that the first meeting?

23 A. Yeah. I think I talked to him on the  
24 phone, maybe, before that briefly. I remember  
25 going to his office visiting with him some more.

1 I remember preparing an opinion that I shared with  
2 him. I remember meeting with him and reviewing  
3 that opinion and --

4 Q. And the opinion you prepared for him --

5 THE COURT: I don't think he was  
6 finished.

7 MR. BOHYER: Excuse me. Go  
8 ahead.

9 THE WITNESS: I think I may have  
10 met with him one more time and that may have been  
11 after the opinion was given and after your  
12 expert's opinions were given.

13 BY MR. BOHYER:

14 Q. So a total of three or four times.

15 A. Yeah.

16 Q. Roughly amount of time that you spent with  
17 Mr. Heenan to get the opinions together?

18 A. Three hours.

19 Q. He also asked you to make some changes to  
20 your opinions, did he?

21 A. He asked me for some addition to the  
22 opinion.

23 Q. My question in that regard, then, Mr.  
24 Patten, is, was that addition your opinion or was  
25 it counsel's opinion?

1       A.           It was my opinion.

2       Q.           In the context of your investigation to  
3       prepare your opinions for this case, could you  
4       tell the jury whether or not you had met Mr.  
5       McCullough?

6       A.           No, I did not meet him.

7       Q.           Did you even speak with Mr. McCullough?

8       A.           No.

9       Q.           How about his wife?

10      A.           No.

11      Q.           I need to switch gears here a little bit.  
12      Am I accurate, Mr. Patten, in the past you've  
13      actually been on opposite sides? You've  
14      represented one party in a case and my clients  
15      have represented a different party?

16      A.           Lots of times.

17      Q.           Is there any baggage there between you  
18      just because of being opponents in cases?

19      A.           I don't think so, but I think the last  
20      phone conversation I had with Mr. Rodenburg was --  
21      he was mad at me.

22      Q.           That happens sometimes among lawyers,  
23      doesn't it?

24      A.           Yeah.

25      Q.           When you are retained to represent your

1 clients, you talked some about conducting diligent  
2 investigations in terms of filing documents on  
3 their behalf.

4 A. Yes.

5 Q. Do you do your best to represent your  
6 clients?

7 A. Yes.

8 Q. Do you ever make errors?

9 A. Certainly.

10 Q. Have you made errors in court pleadings  
11 that you filed that you later on corrected?

12 A. I can't think of any, but I'm sure that I  
13 have.

14 Q. That happens after 30 years of practice,  
15 doesn't it?

16 A. You bet, yes.

17 Q. I'm assuming that the errors you made  
18 weren't intentional.

19 A. I hope not. I don't remember any, but  
20 it's a fact of life.

21 Q. It is, isn't it? And when you make the  
22 error with the court pleadings, is it your  
23 obligation as the lawyer to try to correct that?

24 A. I believe so, yes.

25 Q. And if there's a case that gets filed

1 after a statute of limitations has actually run,  
2 and the lawyer discovers that fact to be the case,  
3 would you agree that the lawyer should then  
4 dismiss the case?

5 A. Yes.

6 Q. Are you aware that happened in this case?

7 A. I'm aware -- I recall, I might be wrong, I  
8 recall they tried to dismiss it without prejudice.

9 Q. Are you aware that the case was ultimately  
10 dismissed?

11 A. Yes.

12 Q. Did you have a trial of any of the cases  
13 that you have had against my clients?

14 A. I recall one trial.

15 Q. And was that a debt-collection action like  
16 the underlying case here?

17 A. Yes.

18 Q. And what was the result of that case?

19 A. There was a judgement entered for the  
20 credit card company or whatever.

21 Q. So the lawyers go through their discovery.  
22 You go to court, whether it's a bench trial or a  
23 jury trial, parties put on their facts and, in  
24 that case, the finder of fact said, Debtor, you  
25 owe the money.

1       A.           Yes.

2       Q.           No baggage from that trial.

3       A.           No.

4       Q.           Mr. Patten, I was reading through the  
5       deposition that you had given in this case. Do  
6       you recall that?

7       A.           Yes.

8       Q.           And I actually didn't take that  
9       deposition; my partner, Mr. Simpson did. As I  
10      recall, he had asked you a question about whether  
11      you had ever had a case that ultimately was  
12      dismissed on the basis of the statute of  
13      limitations. And initially, I think you had said  
14      you didn't think so. But then one was pointed out  
15      to you. Do you recall that?

16      A.           Yeah.

17      Q.           And that was actually a case that you had  
18      filed on behalf of your own firm. True?

19      A.           That's correct.

20      Q.           And ultimately not only the District Court  
21      but the Supreme Court said, Yeah, your case was  
22      filed after the statute of limitations. True?

23      A.           Yes.

24      Q.           I'm assuming, there, that you believed in  
25      your mind that you had information that you felt



1 trustworthy to file that case.

2 A. Yes.

3 Q. Even though the Court ultimately found  
4 that the statute of limitations had run.

5 A. Yes.

6 Q. That happens in lawsuits, doesn't it?

7 A. Yeah, but in that case the issue of  
8 statute of limitations was sort of an issue, and  
9 the question was, when does it start in the  
10 particular facts of that case. So it wasn't -- I  
11 mean, that was on the table from the beginning.  
12 And that's what we argued about was whether the  
13 statute of limitations had run.

14 Q. On the underlying suit here, the statute  
15 of limitations was on the table here too, wasn't  
16 it?

17 A. I think in a way different fashion,  
18 though.

19 Q. I think the point of the inquiry, Mr.  
20 Patten, is that sometimes lawyers file lawsuits  
21 based on information that they have, or believe  
22 that they have, and they think that that case is  
23 timely and, low and behold, later on, either the  
24 lawyer discovers facts or the Court concludes  
25 that, you know, I'm sorry, but your case is filed

1 after the statute.

2 A. In the case you're referring to, the  
3 Court -- there were no facts that were in dispute.  
4 The Court said, Under these particular facts, the  
5 statute of limitations has run.

6 Q. Have you met my client, Lisa Lauinger, or  
7 seen her prior to today?

8 A. No. No.

9 Q. How about Mr. Dendy?

10 A. No.

11 Q. You had testified on direct that years  
12 ago, and I can't believe it's this long ago, but I  
13 think you said the early eighties that you did  
14 some creditor work or collection work for the  
15 Montana Association of Credit Management.

16 A. Yes.

17 Q. And those were business debt collections?

18 A. Yes.

19 Q. Can you give the jury an idea of how many  
20 you filed of those over the years?

21 A. I think there were hundreds, maybe  
22 thousands.

23 Q. Were you a factory?

24 A. No.

25 Q. Was your business the production of

1 Complaints?

2 A. No.

3 Q. Were you a solo practitioner?

4 A. No.

5 Q. How many other lawyers?

6 A. There were three of us.

7 Q. And I think you testified on direct that  
8 your work with that entity ended in '81 or early  
9 eighties.

10 A. No. It would have started -- I don't  
11 remember exactly, but it would have started in  
12 '82, maybe, when essentially we purchased a firm  
13 from a retiring lawyer and it was his client. And  
14 with him and me and another attorney, then, we  
15 did -- as I recall, it would have been five or six  
16 years. And it ultimately kind of waned and we  
17 just couldn't justify it. And I think the Montana  
18 Association of Credit Management just dissolved.  
19 It ceased to be. So we quit doing it.

20 Q. So it went away?

21 A. Yeah.

22 Q. Did I hear you accurately that you may  
23 have filed up to a thousand on that?

24 A. I think between all of us there could have  
25 been a thousand, yes.

1 Q. Did you believe you had good grounds for  
2 the suits you filed?

3 A. Yes.

4 Q. Do you recall whether any of those suits,  
5 sir, got dismissed because some of the documents  
6 weren't quite accurate?

7 A. No.

8 Q. You don't recall?

9 A. No, I don't think any were for that  
10 reason.

11 Q. The nature of that work differed from the  
12 work my clients do only in the sense that you were  
13 representing creditors on business debt as opposed  
14 to consumer debt?

15 A. I think so, yeah.

16 Q. When you did your work with the Montana  
17 Association of Credit Management and filed these  
18 up to one thousand Complaints, did you use  
19 formats?

20 A. Yes.

21 Q. Did you have paralegals that assisted you  
22 in the preparation of the documents?

23 A. No.

24 Q. Were your Complaints form Complaints?

25 A. In a sense.

1 Q. In the sense that there's boiler plate or  
2 identical language in each Complaint, and you fit  
3 the specific facts of each case into that  
4 Complaint and then filed it?

5 A. Yes.

6 Q. Similar to how my client handles their  
7 Complaint?

8 A. I don't know how they handled those, how  
9 they created those Complaints.

10 Q. Is the difference in terms of being a, I  
11 think the word factory, whose product is  
12 Complaints, is it simply the difference between  
13 filing a thousand Complaints and 2700 over 18  
14 months?

15 A. I think the difference is we would review  
16 documents and, while we maybe used the form, our  
17 client didn't give us a sheet that said, we are  
18 owed a thousand dollars and we just plugged that  
19 in and went with it. We had the documents. We  
20 reviewed them. We went through them. We had  
21 calculators and punched the buttons ourselves and  
22 did our best to make sure what we were claiming  
23 was what was owed, that we had documents to back  
24 it up, that we were ready to go to trial when the  
25 case was filed. We could have gone to trial the

1 next day and we had all our exhibits and all of  
2 that.

3 So I think there's a difference  
4 between that and simply taking information,  
5 summary information, that is provided by a client  
6 and just plugging it in and mass-producing  
7 Complaints.

8 Q. Okay. So the difference isn't in just the  
9 sheer number, at least from your view, of you  
10 filing a thousand and my client filing several  
11 thousand.

12 A. Yeah.

13 Q. Okay. Would you agree with me, Mr.  
14 Patten, that in the context of a lawsuit lawyers  
15 might not have, or clients may not have, a  
16 specific document when that lawsuit begins, but  
17 they're actually entitled to request the other  
18 party to produce one of those documents in that  
19 lawsuit? Are they not?

20 A. At times, yes.

21 Q. Not at times, in every case. In a  
22 litigated case, under the Rules of Civil Procedure  
23 and on behalf of my client, I can ask another  
24 client, Please produce these documents. I'm  
25 entitled to do that, aren't I?

1       A.           Yes, if they are reasonably expected to  
2       have those -- you can ask for anything you want.  
3       Whether it's proper or not is a different  
4       question. But you're not going to ask them for  
5       documents they don't have, or at least you  
6       shouldn't.

7       Q.           Okay. I'm just talking about the process.  
8       You're entitled to ask for documents that you may  
9       not have?

10      A.           Yes.

11      Q.           Did I hear you accurately on direct, Mr.  
12      Patten, that you have not handled any credit card  
13      collections similar to my client?

14      A.           As a plaintiff?

15      Q.           Yes, on behalf of the creditor.

16      A.           Not that I can recall, certainly not in  
17      the last 10, 15 years.

18      Q.           Am I accurate you never represented a bank  
19      or a credit union to collect on credit card debt?

20      A.           Not that I recall.

21      Q.           You've never represented a debt buyer such  
22      as CACV who held the debt in the underlying case?

23      A.           No.

24      Q.           On direct there were a few questions asked  
25      about the software program that my client uses

1       called Collection Master. Do you recall those  
2       questions?

3       A.       Yes.

4       Q.       I understand you've never used that  
5       software program.

6       A.       No.

7       Q.       True?

8       A.       No.

9       Q.       You're not familiar with it at all?

10      A.       Only the screens that are printed out that  
11      were provided to me.

12      Q.       Do you utilize a paralegal in your  
13      practice currently?

14      A.       Yes.

15      Q.       Does your paralegal help with basic  
16      drafting, investigation and research?

17      A.       Yes, she does.

18      Q.       You had mentioned that much of your  
19      practice now relates to bankruptcy.

20      A.       Yes.

21      Q.       And that I think, what did you say,  
22      something in the neighborhood of in 95 percent of  
23      the debtors that you represent in bankruptcy,  
24      credit card debt is the issue, or one of them?

25      A.       95 percent of the consumer debtors that I



1 represent.

2 Q. Sometimes debt is contested?

3 A. Yes.

4 Q. And sometimes it's owed?

5 A. Yes.

6 Q. Are creditors entitled to be paid what  
7 they are owed?

8 A. If it's not time-barred, yes.

9 MR. BOHYER: Your Honor, can we  
10 display 504? It's been pre-admitted.

11 THE COURT: You may.

12 BY MR. BOHYER:

13 Q. Mr. Patten, are you able to see that?

14 A. Yes.

15 Q. This is, as you can see, a February 8,  
16 2007 letter that was sent by my client, Johnson,  
17 Rodenburg & Lauinger, on behalf of its client,  
18 CACV, to Mr. McCullough. Do you see that?

19 A. Yes.

20 Q. When you were deposed in this case, some  
21 of the opinions that you rendered had to deal with  
22 the diligence or completeness of the investigation  
23 that my client undertook before filing the suit  
24 against Mr. McCullough. Correct?

25 A. Yes.

1 Q. And when you testified and put together  
2 your opinion report, you were assuming that, after  
3 my client sent Exhibit 504 to Mr. McCullough, you  
4 were assuming that Mr. McCullough had actually  
5 responded to that before my client filed a suit.  
6 True?

7 A. I don't remember.

8 MR. BOHYER: Do you have the  
9 Original deposition there?

10 THE CLERK: No, I don't.

11 MR. HEENAN: I have no objection  
12 using a copy, if it will speed it along.

13 THE COURT: Okay.

14 MR. BOHYER: Thank you, Counsel.  
15 I appreciate it.

16 BY MR. BOHYER:

17 Q. Here we are. Mr. Patten, a question was  
18 asked of you, Are you aware in this case,  
19 before --

20 THE COURT: Could you please tell  
21 me page and line?

22 MR. BOHYER: I'm sorry, Your  
23 Honor. Page 57, commencing at line 12.

24 THE COURT: Thank you.

25 BY MR. BOHYER:

1 Q. A question was asked of you, Mr. Patten,  
2 Are you aware that in this case, before serving  
3 the lawsuit on Mr. McCullough, Johnson, Rodenburg  
4 & Lauinger sent him a letter asking him if he  
5 disputed the validity of the claim at CACV?

6 And you responded, I think I  
7 understand that.

8 Next question was, And what's  
9 you're knowledge of what response, if any, Mr.  
10 McCullough made?

11 You responded, I guess I was -- as  
12 I sit here, I was thinking that he had responded  
13 and asserted the statute of limitations as an  
14 issue.

15 Next question, He didn't respond  
16 before the suit was served, though. Is that your  
17 understanding?

18 Answer, I guess that I thought he  
19 had.

20 Did I read that correctly?

21 A. Yes, you did.

22 Q. So when you were giving your opinions, you  
23 were operating on the assumption that he had  
24 actually told my client, before the suit was  
25 filed, hey, statute of limitations.

1       A.           I think I was operating under the belief  
2       that he had done that, yeah.

3       Q.           You know now that that's inaccurate, don't  
4       you?

5       A.           Yes.

6       Q.           At the time you put together your report,  
7       you had met with Mr. Heenan four times, three or  
8       four?

9       A.           Yeah.

10      Q.           He had provided you with a stack of  
11     documents?

12     A.           Yes.

13     Q.           Do know if you brought all those with you  
14     today?

15     A.           I did not, no.

16     Q.           And you reviewed all those.

17     A.           Yes.

18     Q.           But in your investigation, you missed one  
19     of the key facts, true?

20     A.           I don't know if it was a key fact, but I  
21     missed it and I know there was a notebook like Mr.  
22     Heenan has that was this thick with stuff. And if  
23     I got some facts turned around or I misunderstood  
24     them, that's what I did.

25     Q.           That's my entire point. Sometimes lawyers

1 get documents, whether it's a notebook, a box, or  
2 a roomful. They go through them and they put  
3 their stuff together. You gave your opinion to  
4 the best of your ability, true?

5 A. Yes.

6 Q. They put their stuff together, they get  
7 ready to file it with the Court, and lo and  
8 behold, they get ready for court and they discover  
9 it's wrong. That happens?

10 A. Yes.

11 Q. In your case, you didn't do that  
12 maliciously.

13 A. No.

14 Q. Or intentionally.

15 A. No.

16 Q. Or with the intent to abuse the process of  
17 the Court.

18 A. No.

19 Q. An error.

20 A. Yes.

21 Q. In terms of rendering or operating on the  
22 assumption that Mr. McCullough had actually  
23 responded to the demand letter, Exhibit 504, you  
24 would have learned the correct facts had you  
25 spoken with Mr. McCullough, true?

1       A.           If I would have asked him that, yeah.

2       Q.           Likewise, you would have learned the  
3       correct facts if you would have asked Mr. Heenan.

4       A.           Yes.

5       Q.           And likewise, if you had reviewed that  
6       file in any greater detail, you would have  
7       discovered that prior to the time the suit was  
8       filed there was no response from Mr. McCullough,  
9       true?

10      A.           Yes.

11      Q.           Now, with respect to Exhibit 504, the  
12      demand letter that is sent out to Mr. McCullough,  
13      or a debtor, in the situations where you have  
14      those and you're representing a debtor, you either  
15      respond to that or you have the client respond to  
16      that, if they contest the debt. True?

17      A.           Yes.

18      Q.           And you do that in part, in a  
19      debt-collection matter, in part to head off the  
20      problems that I guess we are here talking about  
21      today.

22      A.           Yes.

23      Q.           I think the words that you used previously  
24      were that if the debtor such as Mr. McCullough  
25      responds prior to the suit and says, hey, the

1 statute of limitations is up, it nips it in the  
2 bud and it saves everybody agony.

3 A. I don't know if I said directly Mr.  
4 McCullough, but I think I did say nip it in the  
5 bud.

6 Q. And that's what the purpose is of  
7 responding to the letter?

8 A. That's how I view the purpose of  
9 responding.

10 Q. Mr. Patten, you had answered during the  
11 direct examination questions about lawyers'  
12 obligations to conduct I think diligent inquiry  
13 were the words you used.

14 A. Yes.

15 Q. I'm guessing, but I'm not positive, are  
16 you referring to a specific rule in that regard?

17 A. Yes.

18 Q. Would that be Rule 11?

19 A. It's one of them.

20 Q. Generally speaking, without getting bogged  
21 down with that in the specifics of the rule,  
22 generally it provides that lawyers should conduct  
23 a reasonable or diligent investigation before they  
24 sign pleadings and file them with the Court.

25 A. I think Rule 11 says reasonable inquiry

1 into the facts.

2 Q. And if the lawyer doesn't do that in a  
3 specific case, the other party to that case has a  
4 remedy in that case, do they not?

5 A. Yes.

6 Q. And that remedy is that, and we can take  
7 Mr. McCullough's case here, the party in that case  
8 can go to the judge on that case and say, Your  
9 Honor, they didn't conduct a diligent inquiry and  
10 I want you to sanction that defendant for doing  
11 what they did. True?

12 A. You can do that, yes.

13 Q. That's the purpose of Rule 11, isn't it?

14 A. I'm not -- is what the purpose? Is  
15 sanction the purpose? Or is it keeping attorneys  
16 honest the purpose?

17 Q. Keeping them to diligent inquiries.

18 A. Keeping them to diligent inquiries, yes.

19 Q. Can we agree it serves all of those  
20 purposes?

21 A. Yes.

22 Q. Are you aware here that Mr. McCullough  
23 never filed such a motion with the Court in which  
24 the case was pending?

25 A. I don't recall that he did.



1 Q. There was no relief sought from that Court  
2 saying, hey, Johnson, Rodenburg & Lauinger cheated  
3 or they violated Rule 11. Please sanction them.

4 A. I don't recall that there was.

5 Q. Certainly there was no order issued to  
6 that effect, was there?

7 A. Not that I remember, no.

8 MR. BOHYER: Your Honor, we refer  
9 to 501 which has already been admitted.

10 THE COURT: Okay.

11 BY MR. BOHYER:

12 Q. You had talked, Mr. Patten, in the direct  
13 examination -- and before I go on --

14 MR. BOHYER: Can you blow up the  
15 text a little bit? It's kind of tough to read.

16 BY MR. BOHYER:

17 Q. You had talked a bit during your direct  
18 examination, Mr. Patten, about the obligations of  
19 lawyers or law firms to conduct investigation to  
20 try to inquire about facts.

21 A. Yes.

22 Q. Do you recall that? And particularly, if  
23 a lawyer has doubts about facts, they should  
24 follow up on them if they have a doubt, even if  
25 they haven't done anything to begin with.

1       A.           Correct.

2       Q.           That's what my client's doing here, isn't  
3       it, in Exhibit 501?

4       A.           They asked the question.

5       Q.           That's right. They did. They are  
6       investigating. Would you agree with that?

7       A.           I would agree that it is an investigation,  
8       yes.

9       Q.           You just disagree with either the extent  
10      of it or the source documents.

11      A.           I would disagree with whether it's a  
12      reasonable inquiry, because they simply accept  
13      without any documentation what CACV gives them.  
14      And CACV has already told them, You can't rely on  
15      what we tell you.

16      Q.           That's not quite the language that was in  
17      that. It says, We don't warrant or verify the  
18      accuracy of the information. They don't say, You  
19      can't rely on it.

20      A.           We may be parsing words. That's what it  
21      means to me. When they don't warrant it, they are  
22      saying we don't stand behind our representation.

23      Q.           You currently represent creditors such as  
24      banks and credit unions and those kinds of  
25      companies?

1       A.           Yes.

2       Q.           Have they ever verified to you the  
3       specificity of a figure or a document that they  
4       give you?

5       A.           They give me enough documentation that I  
6       can verify by looking at it.

7       Q.           That's not quite my question, though. Do  
8       they ever specifically say, Mr. Patten, I hereby  
9       verify these, absent a specific verification.

10      A.           You mean, do they say, we verify these  
11      documents?

12      Q.           You bet.

13      A.           No.

14      Q.           And similarly, those clients don't come in  
15      and say, We don't warrant anything. True?

16      A.           No. No, they don't.

17      Q.           So the lawyer in any given case, it  
18      doesn't matter to me whether it's a debt  
19      collection or a bank case or anything else,  
20      clients don't necessarily warrant the specific  
21      validity of any information.

22      A.           Well, I think, Mr. Bohyer, you need to  
23      keep all of the circumstances in view here. The  
24      client isn't the original creditor. So the client  
25      has information, bare information, that it's

1 received from somebody else and it's passing on to  
2 their attorney saying, We are not warranting that  
3 stuff. Which, as I read it, is saying, you can't  
4 rely on what we are telling you. We are not  
5 backing up what we are telling you.

6 So it's like somebody comes to you  
7 and says, I bought a debt that was owed to my  
8 neighbor and I want you to sue on that debt, and I  
9 don't have any documents to prove the debt. And  
10 by the way, I don't warrant what I tell you. You  
11 can't really rely on what I'm telling you. You  
12 wouldn't bring a suit based on that.

13 Q. You want to go and do some investigation  
14 and kind of check it out.

15 A. Yeah.

16 Q. So shortly after Johnson, Rodenburg &  
17 Lauinger gets the case into their office, and I  
18 believe the date on Exhibit 501 is January 4.

19 A. Yes.

20 Q. Shortly after they get it in, they  
21 recognized that there might be a statute problem.  
22 Will you agree with me there?

23 A. The question came up. So yes.

24 Q. Well, it not only came up, but Grace  
25 Lauinger actually said, It looks like the statute

1 of limitations has expired.

2 A. Yeah.

3 Q. So she at least identified it.

4 A. Yes.

5 Q. Now, you understand that her position  
6 there is an account manager and she is not a  
7 lawyer?

8 A. Right.

9 Q. Okay.

10 MR. BOHYER: Would you put up  
11 502, please. Will you blow up the section there  
12 from Mr. McCullough's name on down. Thank you.

13 BY MR. BOHYER:

14 Q. Can you see that, Mr. Patten?

15 A. Yes.

16 Q. I'm not technically savvy, so pardon me.

17 This is a response from Mr.  
18 Gusting back to Lisa Lauinger. Do you see that?

19 A. Yes.

20 Q. And he tells her that the debtor also made  
21 a 6/30/04 PD, and I think we've concluded that's a  
22 postdated check, for 75. Do you see that?

23 A. Yes.

24 Q. You may disagree with the extent of it,  
25 but from our client's standpoint, they are going

1 about trying to get some additional information on  
2 the statute of limitations. True?

3 A. Yes.

4 Q. Now, if in fact, Mr. Patten, if in fact  
5 Mr. McCullough had made a payment in late June of  
6 2004, as CACV is telling our client, that's within  
7 the statute.

8 A. Yes.

9 Q. Is it your opinion that an attorney such  
10 as you or me can't rely upon the honesty of what  
11 our client tells us?

12 A. I think we can't rely on information that  
13 is expressly not warranted to be accurate when the  
14 client that we are getting information from may  
15 not be the one that actually knows.

16 Remember, these debts were  
17 purchased from somebody else. And so I think you  
18 also need to remember that when pushed to produce  
19 the underlying documents, at least half of the  
20 time, in my experience, CACV can't produce them.  
21 So you're relying on somebody who's getting the  
22 information from somebody else to begin with and  
23 you know that they told you that it can't be  
24 warranted and may not be accurate. And you know,  
25 when you really want the documents, that's a 50-50

1 chance you won't get them.

2 Q. I want to go back to my question, though.  
3 My question is, is it your testimony that an  
4 attorney can't rely upon the honesty of their  
5 client?

6 A. I think it depends entirely on the  
7 circumstance.

8 Q. I think when you were deposed in this case  
9 you told us, under oath, that you never --

10 THE COURT: I'm going to stop  
11 you. Deposition testimony is hearsay. If you  
12 need it to impeach, that's fine. But I'm going  
13 to ask you not to read from the deposition unless  
14 it's a proper use of the deposition.

15 MR. BOHYER: Yes, Your Honor.

16 BY MR. BOHYER:

17 Q. In fact, you never believe what your  
18 clients tell you, do you?

19 A. I don't, no.

20 Q. Would you agree with me, Mr. Patten, as of  
21 March of 2007, when the debt-collection suit was  
22 filed against Mr. McCullough, that they did not  
23 have information that it was time-barred but  
24 rather they actually had information, including  
25 Exhibit 502, that confirmed that it was timely?

1       A.           I would admit that they had information  
2       that it was timely.

3       Q.           Are you aware even later on, after the  
4       suit was filed, Johnson, Rodenburg & Lauinger,  
5       Grace Lauinger, had inquired further of CACV to  
6       get information on the statute of limitations?

7       A.           I recall that, yes.

8       Q.           Mr. Patten, so the jury is clear on this,  
9       the debt that Johnson, Rodenburg & Lauinger was  
10      filing suit upon against Mr. McCullough, that  
11      wasn't Johnson Rodenburg's debt. It was a debt of  
12      a client that they were representing, true?

13      A.           Yes.

14      Q.           Would you agree with me there is no  
15      ultimate purpose or ultimate motive other than  
16      filing the suit to collect the debt, from the  
17      lawyer's standpoint?

18      A.           I'm not sure I understand what you mean by  
19      "ultimate motive."

20      Q.           Aside from filing suit on the debt, you've  
21      not been provided any information that Johnson,  
22      Rodenburg & Lauinger had any other dispute with  
23      Mr. McCullough.

24      A.           No.

25      Q.           So aside from the purpose of filing the



1 suit to collect the debt on behalf of the client,  
2 they didn't have any other motive for filing the  
3 suit. Would you agree with that?

4 MR. HEENAN: Objection.  
5 Speculation.

6 THE COURT: If you know.

7 THE WITNESS: I think they have  
8 to have a contingent fee interest it.

9 BY MR. BOHYER:

10 Q. Aside from collecting a fee associated  
11 with the lawsuit.

12 A. A contingent fee that is associated with  
13 that?

14 Q. Yep.

15 A. No.

16 Q. In fact, you were not provided any  
17 information that would suggest otherwise.

18 A. No.

19 Q. I apologize if I asked this previously,  
20 but there were questions asked of you about  
21 default judgements. You're aware or would you  
22 agree with me that no default judgement was  
23 entered against Mr. McCullough?

24 A. Yes.

25 Q. In fact, no judgement at all was entered

1       against him.

2       A.           Correct.

3       Q.           Meaning, with respect to that request for  
4       admission I showed you, where it said he made  
5       purchases with the credit card, the debt was not  
6       paid.

7       A.           I don't follow the question.

8       Q.           So the suit's filed. There is an issue  
9       about it being time-barred. There is an admission  
10      by Mr. McCullough, yeah, I had the Chase credit  
11      card and made purchases with it, so by the time  
12      the case is dismissed, there is no collection on  
13      the debt and the debt remained unpaid.

14      A.           Yes. That was time-barred.

15      Q.           In your practice presently, are you seeing  
16      an increase in the number of bankruptcy filings  
17      related to credit card debt?

18      A.           Not an increase.

19      Q.           Pretty steady?

20      A.           The law was changed a couple years ago and  
21      there was a huge increase right before the law  
22      changed. And then it dropped off and it's kind of  
23      building back up. But for the last year or so we  
24      haven't been filing as many of those kinds of  
25      bankruptcy because we have been too busy doing

1 other kinds of bankruptcy.

2 Q. The context of your bankruptcy practice  
3 and those folks who have credit cards, do you end  
4 up representing those people who have just  
5 overspent their means?

6 A. Yes.

7 Q. They owe the money. True?

8 A. Yes.

9 MR. BOHYER: Mr. Patten, thank  
10 you. I appreciate your time.

11 THE COURT: Is there redirect  
12 examination?

13 MR. HEENAN: Yes, Your Honor.  
14 Briefly. Fairly briefly.

15 REDIRECT EXAMINATION

16 BY MR. HEENAN:

17 Q. Mr. Patten, Johnson Rodenburg's counsel  
18 just showed you an e-mail from someone at CACV  
19 saying on June 30, 2004 a payment had been made.

20 A. Yes.

21 Q. And that's apparently the information that  
22 Johnson Rodenburg felt sufficient to file a  
23 lawsuit against Mr. McCullough.

24 A. I guess.

25 Q. Who knows?

1 A. Yeah.

2 Q. I want to show you Exhibit 111-8, which  
3 are these Collection Master notes.

4 MR. HEENAN: Blow up this part  
5 right here, please.

6 BY MR. HEENAN:

7 Q. If we look at Johnson Rodenburg's own  
8 file, there is an entry for June 30, 2004, isn't  
9 there?

10 A. Yes.

11 Q. It says, Returned unused costs, doesn't  
12 it?

13 A. Yes.

14 Q. And later on, that's what CACV advises  
15 Johnson Rodenburg after the lawsuit had already  
16 been filed.

17 A. They were advised what they claim was a  
18 payment was a return of costs.

19 Q. And that was actually in Johnson  
20 Rodenburg's file all along?

21 A. Yes.

22 MR. HEENAN: 111-10, please.

23 BY MR. HEENAN:

24 Q. You're aware that Mr. McCullough had  
25 already been sued by a different law firm on this

1 debt, correct?

2 A. Yes.

3 MR. HEENAN: Please bring up that  
4 portion.

5 BY MR. HEENAN:

6 Q. Again, I'm showing you Johnson Rodenburg's  
7 own notes. Contained within the file is an entry  
8 from 2005. Do you see that?

9 A. Yes.

10 Q. And the entry is, Debtor filed an answer,  
11 says statute of limitations is expired and if they  
12 are going by an open account then we are. Advise  
13 law firm.

14 Do you see that?

15 A. Yes.

16 Q. If you were handed a file from someone  
17 that had this type of information in the file,  
18 would you want to do some follow-up about that?

19 A. Yes.

20 Q. What would you do?

21 A. Well, if I had information in the file  
22 that there were costs returned on June 30 of 2004  
23 or '5, whatever the year was, and in my same file  
24 I'm showing from the client that that's the date  
25 of the last payment, it would make me wonder if

1 the return of costs was the last payment.

2 Q. And then the same question with respect to  
3 if a client who tells you not to rely on the  
4 validity of what they told you provides you a file  
5 and in that file there's information that the  
6 person they want you to sue has already been sued,  
7 asserted a statute of limitations defense and the  
8 previous lawsuit went away, how would that impact  
9 your due diligence before you filed a second  
10 lawsuit against the guy?

11 A. I would want to look at the underlying  
12 documents of when the last payment was paid; not  
13 somebody's records of when it was paid but the  
14 document itself.

15 Q. Not someone -- I want you to tell -- I  
16 mean, that's a distinction. That's a big  
17 difference, isn't it? The documents themselves  
18 versus someone sending an e-mail.

19 A. Yes.

20 Q. Why so?

21 A. Well, because you could look at the  
22 document and judge for yourself how reasonable it  
23 is to rely on it as opposed to just receiving  
24 words through an e-mail from a client saying this  
25 is what happened.

1 Q. Mr. Bohyer asked you some questions about  
2 all lawyers make errors. That's true, right?

3 A. Yes.

4 Q. One of the criticisms that you've  
5 expressed with respect to this case is Johnson  
6 Rodenburg's demand for attorneys' fees against Mr.  
7 McCullough without a factual basis. Is that true?

8 A. Yes.

9 MR. BOHYER: This is beyond the  
10 scope of the cross. I didn't ask anything about  
11 fees.

12 THE COURT: That's true.  
13 Sustained.

14 BY MR. HEENAN:

15 Q. I want to show you --

16 MR. HEENAN: This isn't an  
17 exhibit, but I don't have a paper copy so I don't  
18 think the jury should see it, but you could bring  
19 it up.

20 BY MR. HEENAN:

21 Q. Counsel showed you some discovery requests  
22 that I sent on behalf of Mr. McCullough to Johnson  
23 Rodenburg. Correct?

24 A. Yes. Yes.

25 Q. Do you have those in front of you still?

1       A.           No, I returned them to Mr. Bohyer.

2                   MR. HEENAN:   Just don't read my  
3       notes.

4       BY MR. HEENAN:

5       Q.           What's the caption of that document, Mr.  
6       Patten?

7       A.           United States District --

8       Q.           What are we --

9       A.           Plaintiff's Second Combined Discovery  
10      Request.

11      Q.           That was the second, as opposed to the  
12      first.   Right?

13      A.           Yes.

14      Q.           I want to show you the first --

15                   MR. HEENAN:   Thank you, Counsel.

16      BY MR. HEENAN:

17      Q.           -- requests that will come up on your  
18      screen.   Do you see those?

19      A.           Yes.

20      Q.           And can you read for the jury what the  
21      language is that was contained in the first  
22      discovery?

23                   MR. BOHYER:   We can't see what is  
24      on there.

25                   MR. HEENAN:   I can't see it on

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1 mine either.

2 MR. SIMPSON: Now we have it.

3 There it is.

4 THE WITNESS: You want me to read  
5 the instructions verbatim?

6 MR. HEENAN: Yes.

7 THE WITNESS: To Defendant  
8 Johnson, Rodenburg & Lauinger by and through its  
9 counsel of record. Please take notice that  
10 pursuant to Rules 33, 34 and 36 of the federal  
11 Rules of Civil Procedure you are hereby required  
12 to answer under oath the following  
13 interrogatories, requests for admission and  
14 requests for production of documents within 30  
15 days from the time of service is made upon you.

16 BY MR. HEENAN:

17 Q. That is the language you're talking about  
18 that as a Montana lawyer you consider to be fair  
19 and appropriate when sent to the other side, these  
20 requests for admission, at least to the extent  
21 notifying the other side they have 30 days to  
22 respond?

23 A. I think, when you're dealing with  
24 attorneys, you don't have to tell them what the  
25 rules say, because they should know what the rules

1 say.

2 Q. Do you have an opinion about the first  
3 time you send out requests, even though they are  
4 attorneys and they know the rules, you tell them  
5 the rules anyway, and then, the second time, you  
6 omit them, to save some paper?

7 A. I think that may vary. I think we have  
8 the same instructions on the discovery that we  
9 send out. But I think there's a distinction when  
10 you're dealing with an attorney and when you're  
11 dealing with a pro se party.

12 Q. Why so?

13 A. Fairness.

14 Q. Fairness in terms of what?

15 MR. BOHYER: Your Honor, I object  
16 to this on a legal conclusion given the witness's  
17 admissions that the law doesn't draw a  
18 distinction.

19 THE COURT: Overruled. But I  
20 think this was all covered before. But I will  
21 allow him to answer.

22 MR. HEENAN: I don't want to  
23 cover the same ground twice. I will move on,  
24 Your Honor.

25 BY MR. HEENAN:

1 Q. Mr. Patten, counsel asked you about there  
2 wasn't in fact a judgement taken against Mr.  
3 McCullough, right?

4 A. Yes.

5 Q. Do you have an opinion about why that is?

6 A. Yeah.

7 Q. What is your opinion?

8 A. Because you got involved to defend him.

9 MR. HEENAN: No further  
10 questions. Thank you.

11 THE COURT: Thank you, Mr.  
12 Patten. You may step down.

13 May this witness be excused?

14 MR. HEENAN: Yes, Your Honor.  
15 Plaintiff will call Dr. Donna Veraldi.

16 THE COURT: Please come forward  
17 and be sworn.

18 DONNA VERALDI, having been duly sworn, was  
19 examined and testified as follows:

20 THE CLERK: Have a seat, please,  
21 and state your full name and spell it.

22 THE WITNESS: My name is Donna  
23 Mary Veraldi.

24 DIRECT EXAMINATION

25 BY MR. HEENAN:

1 Q. Good morning, Dr. Veraldi. Can you please  
2 tell the jury what it is you do?

3 A. I'm a clinical psychologist. That means  
4 that I do treatment and evaluation of people with  
5 various mental health problems.

6 Q. Can you briefly, please, summarize your  
7 educational and professional background in that  
8 regard?

9 A. Yes. I got my Ph.D. in --

10 Q. Do you need a minute to get your papers  
11 out?

12 A. I think I'm okay. I got a Ph.D. in  
13 clinical psychology from the University of Montana  
14 in Missoula, and I'm licensed as a psychologist in  
15 both Montana and Minnesota. And I have done a  
16 variety types of jobs, although most of my work  
17 has been private practice in clinical psychology.

18 Q. What does that mean, private practice in  
19 clinical psychology?

20 A. That means I have my own office and I see  
21 people on an individual basis or work for  
22 different individuals. I'm not full-time employed  
23 by an agency.

24 Q. As part of your practice, do you have  
25 occasion to evaluate people who have applied for

1 Social Security disability benefits?

2 A. Yes. Since the eighties, I've worked as  
3 what is called a medical expert, even though I'm a  
4 mental health expert, for the Social Security  
5 Administration and Office of Disability  
6 Adjudication Review.

7 So I go to hearings with  
8 administrative law judges who are hearing Social  
9 Security disability cases, and I serve basically  
10 as their expert. I read the mental health files  
11 for them and provide opinions to them as to  
12 whether or not Social Security claimants meet or  
13 equal the mental health listings of impairment.

14 Q. So in that context, who are you working  
15 for, the judge?

16 A. I am the judge's expert, but I'm supposed  
17 to be a neutral expert in that type of process.  
18 They just want to know the information from me.

19 Q. Who qualifies for Social Security  
20 disability?

21 A. I'm sure there are a number of  
22 qualifications. You have to be a licensed  
23 psychologist and --

24 Q. I'm sorry.

25 A. Oh, you mean --

1 Q. Who do you consider and qualify?

2 A. People who are so severely impaired, in  
3 terms of either mental or physical impairment,  
4 that they cannot sustain gainful employment. They  
5 cannot even do repetitive routine work at a  
6 minimum level of pay. Those are the people we  
7 look to give Social Security benefits to. Anybody  
8 above that very minimal line is considered capable  
9 of working and would not qualify for those  
10 benefits.

11 Q. Is it fair to say it's a pretty hard hoop  
12 to jump through, a process to qualify for?

13 A. It appears to me it is. I see people at  
14 one point in that process, but often people have  
15 to apply for disability and then they have to go  
16 through some hearings. And at the point I see  
17 them, they are at the level of administrative law  
18 judge hearing.

19 Q. Did I contact you and ask you to take a  
20 look at my client, Mr. McCullough, in this case?

21 A. Yes, you did.

22 Q. And did you do so?

23 A. Yes, I did.

24 Q. And what did you do exactly?

25 A. I reviewed a number of medical mental

1 health records that were provided to me. I met  
2 with Mr. McCullough. I did what is considered a  
3 clinical interview with him, where I asked him  
4 relevant questions. I also administered a number  
5 of psychological tests to him. I gave him a  
6 Shipley Institute of Living Scale, a Beck  
7 Depression Inventory II, a Personality Assessment  
8 Inventory, a Trauma Symptom Inventory, a Millon  
9 Clinical Multiaxial Inventory III, the Rorschach  
10 with the Exner scoring, and I additionally  
11 interviewed his wife.

12 Q. Were you also provided information by me  
13 about this lawsuit Mr. McCullough has against the  
14 Johnson Rodenburg law firm?

15 A. Yes, I was.

16 Q. And was it explained to you what the  
17 context of this lawsuit was?

18 A. Yes, it was.

19 Q. And what in general terms did I ask you to  
20 do as part of this case?

21 A. My job was to assess Mr. McCullough's  
22 psychological status at the time that I evaluated  
23 him. I needed to take into account any  
24 preexisting mental conditions and additionally  
25 describe the probable impact from the stress and

1 pressure related to the debt-collection practices  
2 that were being alleged by Mr. McCullough.

3 Q. Is it fair to say -- let me ask you this.  
4 When did you see Mr. McCullough?

5 A. I saw him on July 18 of 2008 and July 21  
6 of 2008.

7 Q. So you saw him two times?

8 A. I believe I either saw him two times or I  
9 saw him and then perhaps gave him some additional  
10 testing at another time.

11 Q. Is it fair to say you hadn't seen him  
12 until a year and a half after he received this  
13 lawsuit from Johnson Rodenburg?

14 A. Yes, a year after sort of the final  
15 situation. There had been a long time that had  
16 passed.

17 Q. And does that affect your ability to know,  
18 I mean, in fairness, what the impact of the  
19 lawsuit was to Mr. McCullough?

20 A. Yes. You have to collect information and  
21 make a judgement. But obviously I was not seeing  
22 him in the midst of the reported stress or at the  
23 height of the stress. So I have to come in after  
24 the fact and make a judgement.

25 Q. As part of your review of Mr. McCullough,



1       you looked at his clinical history or medical  
2       history. Is that correct?

3       A.       Yes. Primarily his mental health history,  
4       psychiatric and psychological treatment.

5       Q.       In general terms, what was going on with  
6       Mr. McCullough? I want to walk through, please,  
7       when do we first see some notes about Mr.  
8       McCullough's mental condition?

9       A.       In about 1990. And it appears to me that  
10      Mr. McCullough always had what we call personality  
11      disorders, ingrained patterns of behavior that we  
12      consider to be rather dysfunctional, but  
13      nonetheless he had gotten some education,  
14      maintained employment. He had just recently been  
15      married.

16                      But then an event happened, and  
17      I'm not sure exactly what happened in the early  
18      nineties, where he reportedly sustained a mild  
19      traumatic brain injury. And that's when his  
20      mental health records start, because that was when  
21      he started to have the significant enough problems  
22      that he was seeking treatment and he was having  
23      difficulty with employment.

24      Q.       Do you recall what Mr. McCullough was  
25      diagnosed with in 1990?

1       A.       He was given a variety of diagnoses, but  
2       most of them were based on the idea that he had a  
3       mixed personality disorder, and that he  
4       additionally had an organically based syndrome  
5       that was causing him depression, possibly some  
6       anxiety, and that he additionally, for a time, was  
7       diagnosed with posttraumatic stress disorder.

8       Q.       Now, let's go through. What is mixed  
9       personality disorder?

10      A.       Again, personality disorders are ingrained  
11      patterns of behavior. We somewhat consider them  
12      to be learned patterns of behavior that are part  
13      of a person's ongoing functioning. All of us have  
14      personality characteristics that are just part of  
15      us, and people who know us know that's how we are  
16      put together.

17                       When we diagnose a personality  
18      disorder, we are saying that pattern of  
19      functioning has become dysfunctional or maladapted  
20      in some manner. There are a number listed in our  
21      diagnostic manual, and when we say somebody has a  
22      mixed one, we are saying they have characteristics  
23      of several different types.

24      Q.       In 1990, after this head injury, it was  
25      noted that there were some changes in his

1 personality?

2 A. It did seem to me that there were some  
3 changes in both his personality and also his  
4 thinking, cognition. But, yes, there was some  
5 belief that there were some changes.

6 Q. And what would those changes be?

7 A. Primarily that he seemed to no longer be  
8 able to function at work. And his main concern  
9 was that he was so angry about whatever it was  
10 that had happened at his place of employment that  
11 he was getting these homicidal urges, as he  
12 reported them, and he feared he was so angry and  
13 so potentially prone to hurting people at work  
14 that he could not trust himself going back to  
15 work. And indeed the people treating him also  
16 recommended that he not return to that situation  
17 for other people's safety.

18 Q. How bad does it need to get before a  
19 treating physician is not going to say the person  
20 can return to work because of safety of coworkers?

21 A. I believe that means they have given  
22 serious weight to the statements Mr. McCullough  
23 was making, that they believed there was  
24 significant concern for safety of people around  
25 him and that he couldn't control his impulses very

1 well at that time, that they were taking what he  
2 was saying seriously.

3 Q. And let's just get it out there. What  
4 were some of the statements he was making?

5 A. He was saying, "I might harm people. I  
6 know how to do it. I would feel okay about doing  
7 it."

8 Some things to the effect that his  
9 coworkers, both before and after the incident  
10 where he sustained this injury, had not treated  
11 him well, that people had not taken his injury  
12 very seriously or acted upon it appropriately, and  
13 that he basically couldn't guarantee their safety  
14 if he was around them and that he wouldn't feel  
15 bad if he were to harm or kill them.

16 Q. So his doctors, based on what he was  
17 saying, excluded him from going to work?

18 A. From returning to that particular job,  
19 yes, in particular. And then, I believe, later  
20 said that they just didn't feel he was capable of  
21 returning to work.

22 Q. And he was approved for Social Security  
23 disability at some point in there?

24 A. At some point I believe in the early  
25 1990s, and, yes, they backdated it to this time

1 period.

2 Q. What is the time frame? Take us, then,  
3 from 1990. What is going on with Tim?

4 A. All right. It appears to me during the  
5 nineties that Mr. McCullough was seeking mental  
6 health treatment. He met with Dr. Tompkins, a  
7 psychologist, who evaluated him several times and  
8 he got some brief treatment from him. He also met  
9 with a number of psychiatrists, but the one that  
10 seemed to be willing to treat him was Dr. Carlson  
11 for a long period of time.

12 He made some attempt to try  
13 different medications that psychiatrists give to  
14 people to stabilize their emotions, to control  
15 their behavior, but he eventually felt that he was  
16 being overly medicated and these were not  
17 effective.

18 So the nineties sort of pass. And  
19 at a point he finishes his workman's comp  
20 situation. He gets on Social Security disability  
21 so he doesn't have to go to work. He remains in  
22 his marriage, but he finds if he just withdraws to  
23 his home and keeps his life very low stress that  
24 he can function. He doesn't run into people.

25 So it seems to me the homicidal

1       desire and desire to harm people either is  
2       insulated because he is not around people or that  
3       seems to be down a bit.

4                   Some of his posttraumatic distress  
5       features seems to me to subside somewhat, doesn't  
6       seem to be as depressed.

7                   So as we get into the 2000s, early  
8       to mid -- first part of that 2001 to 2005, when  
9       Dr. Carlson is following him --

10      Q.       What is Dr. Carlson diagnosing him with in  
11      2003?

12      A.       You know, I will have to look back at  
13      that.

14                   MR. HEENAN:   If I might approach,  
15      Your Honor?

16                   THE COURT:    You may.

17      BY MR. HEENAN:

18      Q.       I'm showing you your evaluation.

19      A.       Okay.   That Dr. Carlson thought he was  
20      somewhat of an enigma and that he thought he had  
21      mild dementia still from that reported head  
22      injury.   And he believed he had a generalized  
23      anxiety disorder, but he had a probable  
24      posttraumatic stress disorder, and then he was  
25      following his depression.

1                   But by about 2004, right in that  
2     range, he was considered stable given his  
3     condition, that this is a person who is not very  
4     functional, can't work, but if he stays at home  
5     where he does not have contact with very many  
6     people, interacts with his wife, apparently the  
7     family had the animals, chicken, turkeys, goats,  
8     that he can take care of, if he kept a very  
9     low-stress lifestyle, even though he wasn't taking  
10    medication, his condition was relatively stable  
11    for him.

12    Q.           So at that point, to keep his condition  
13    stable, he essentially withdraws into his home and  
14    never leaves.

15    A.           Rarely leaves, I think. I think he really  
16    limits his interaction with the outside world.

17    Q.           That's to keep his stress level low?

18    A.           That's what he says. And that's  
19    consistent with that history of treatment and what  
20    he was saying to his providers.

21    Q.           When he was treated by Dr. Kline in 2006,  
22    2007, what was he presenting with then?

23    A.           At that time, she, again, made reference  
24    to his organic defective disorder, believing that  
25    he had maybe some type of mood disorder based on

1       that head injury, and that he a mildly anxious  
2       mood.

3                       He seemed to have a depressive  
4       disorder or episode during the summer of 2006,  
5       and, in 2007, he was reporting that his moods were  
6       labile or that he was having a lot more intense  
7       and fluctuating emotions, but he at that time was  
8       refusing any form of medication.

9       Q.       And his refusal to take any medication  
10      coincided with his refusal to leave the house,  
11      basically?

12      A.       Yes. And at a point in time, all of our  
13      medications have side effects. And all of them  
14      have to be tolerated in some way.

15                    He felt the side effects were more  
16      damaging than the benefits of the medication, and  
17      I believe he said that the medication might work  
18      initially, but then across time the effects did  
19      not seem to be very helpful to him.

20      Q.       Based upon your review of the records and  
21      your own evaluation of Mr. McCullough, going  
22      through the tests that you described that I don't  
23      know, frankly, what they all mean, but based on  
24      your administration of those tests and your review  
25      of him, did you render some conclusions about what



1 his current mental state was in July of 2008?

2 A. Yes, I did.

3 Q. And what were those conclusions, please?

4 A. First I tested him specifically for  
5 posttraumatic stress disorder and I did not find  
6 he had enough of those symptoms to be diagnosed in  
7 that way anymore. I did not retest what we would  
8 call his cognitive skills because I took that old  
9 diagnosis that there was some mild cognitive  
10 impairment going back to the early 1990s.

11 I felt he had an adjustment  
12 disorder with a depressed mood, and I believe  
13 there was sufficient generalized anxiety with him  
14 at that time. He talked about being really  
15 vigilant, really reactive to situations. I felt  
16 that's an appropriate diagnosis.

17 Q. Let me stop you. What is anxiety? What  
18 does that mean, someone who has anxiety? What are  
19 their symptoms?

20 A. Anxiety, and most of you are familiar with  
21 it, can affect people in various ways and degrees.  
22 You get physically tense. You get physiological  
23 reactions because your body is getting ready for a  
24 threat or an emergency.

25 Q. I'm sorry. What are physiological

1 reactions?

2 A. You breathe harder. Your heart starts to  
3 pound harder. Your palms sweat. Because that is  
4 basically your body getting ready for an  
5 emergency. You might feel tense and anxious and  
6 worried and apprehensive, and, again, you might  
7 think that there is danger out there and you have  
8 to be alert and watchful for the danger.

9 Q. Thank you. What else did you diagnose him  
10 with and what else did he present with?

11 A. He continued to have what I would consider  
12 a personality disorder. I think he has always had  
13 some problems in how he has functioned and I  
14 diagnosed him specifically with a schizotypal and  
15 narcissistic features with his personality  
16 disorder.

17 Q. What is schizotypal?

18 A. Schizotypal is sort of a diagnosis that  
19 involves somebody who has a pattern of social and  
20 interpersonal deficits where they never quite  
21 connect to other people socially in a very good  
22 way. They look --

23 Q. Is it too simple to say they interact  
24 inappropriately with others? Am I wrong?

25 A. That would be a simplification of a long,

1 complex diagnosis. It includes some  
2 suspiciousness and unusual ways of thinking and  
3 talking and explaining the world. Such people  
4 often look sort of eccentric. They don't maintain  
5 a lot of close friendships outside of their  
6 family. So that would be sort of a suspicious  
7 person.

8 And then the narcissistic aspect  
9 of it is someone who is considered grandiose, who  
10 exaggerates their accomplishments, who wants to be  
11 admired, who tends to present episodes in their  
12 life as if they did very, very well in them, even  
13 if they didn't do particularly well.

14 Q. Let's get this out there. Is someone like  
15 Mr. McCullough the best historian?

16 A. I think he was. There were times he told  
17 me things that I thought I wouldn't rely very  
18 heavily on, because either he misperceives what  
19 happens or he tells it in a way to make himself  
20 look as if he did something very exceptionally  
21 well.

22 Q. How about with respect to depression?

23 A. At the time I tested him, I didn't see  
24 enough symptoms that I felt I could give him  
25 anything more than what I would call adjustment

1 disorder with a depressed mood. I didn't think he  
2 was having a more severe form of depression or  
3 mood disorder at the time I saw him.

4 Q. To be fair, that was a year and a half  
5 after the events that are the subject of this  
6 lawsuit?

7 A. That's right.

8 Q. How about paranoia?

9 A. I thought that was part of the schizotypal  
10 features in that he is suspicious. He is  
11 hypervigilant. He is always watchful of people,  
12 doesn't trust people easily. He tends sometimes  
13 to misinterpret what is happening around him and  
14 maybe relate it as involving some harm to him, one  
15 that might or might not be that case. But yes, he  
16 does have some paranoia.

17 Q. How about schizophrenia?

18 A. I didn't think that diagnosis was  
19 justified. Obviously schizotypal features, the  
20 name is very similar to schizophrenia. The two  
21 overlap a lot.

22 But schizophrenia would require  
23 certain other things. To be a paranoid  
24 schizophrenic, you would have to have delusions  
25 that are bizarre. Paranoid schizophrenics

1 typically have delusions about somebody inserting  
2 thoughts into their head, perhaps being abducted  
3 by aliens. Sometimes they will tell you things  
4 like someone has surgically removed all of their  
5 organs, put somebody else's organs in their body  
6 and sewed them up without any scars.

7 To get into paranoid  
8 schizophrenia, you have to get into really weird  
9 sorts of information or somebody who is actively  
10 having what we call auditory hallucinations, where  
11 they are hearing voices or other things that  
12 aren't actually there.

13 And the question is there with Mr.  
14 McCullough, but I didn't think he met the  
15 diagnostic criteria.

16 Q. In your opinion, Doctor, would Mr.  
17 McCullough know that he had been sued by a law  
18 firm?

19 A. Yes, he would.

20 Q. Would that affect him?

21 A. It seemed to me to be a significant  
22 factor, stress factor, in his life. And that  
23 would affect most people.

24 I did a literature review to see  
25 if there was anything that had been researched

1       about the effect of financial stress on people,  
2       and indeed I found that financial stress will have  
3       a significant impact both physically in terms of  
4       headaches -- 40 percent of people who have  
5       financial stress report increased headaches, other  
6       bodily complaints.

7 MR. BOHYER: Your Honor, the  
8 specificity of these opinions is not specified in  
9 the report on page 13. I will acknowledge that  
10 the statement regarding financial stress is  
11 there, but the specificity of these is certainly  
12 not.

13 THE COURT: I ask the witness to  
14 restrict her testimony to that which was  
15 disclosed.

16 THE WITNESS: All right.

17 THE COURT: Have you completed  
18 your answer other than that?

19 THE WITNESS: Yes, I have.

20 THE COURT: Ask your next  
21 question, Mr. Heenan.

22 MR. HEENAN: Thank you, Your

23 Honor.

24 BY MR. HEENAN:

25 Q. Do you have an opinion, Dr. Veraldi, about

1        what the impact would have been on Mr. McCullough  
2        with respect to this ongoing collection of this  
3        credit card?

4        A.            Well, yes. The stress would have -- and  
5        there certainly was indication from my testing and  
6        in my report, that there was what we call  
7        situational stress with Mr. McCullough, that  
8        something about his life circumstances was making  
9        him feel worse, and it wasn't his ongoing  
10       problems. It was some specific situation or  
11       situations.

12                    So we would expect that any  
13       symptoms he had might get worse. If he tends to  
14       experience physical stress symptoms such as  
15       headaches, those might get worse. If he is prone  
16       to anxiety, that will get worse. If he is a bit  
17       paranoid, that will get worse. If he has trouble  
18       relating to people, that will probably get worse.  
19       It will take the symptoms that he has and make  
20       them worse.

21       Q.            Having reviewed the history of the  
22       collection of this Chase credit card against Mr.  
23       McCullough, do you have an opinion about how this  
24       second lawsuit by Johnson Rodenburg specifically  
25       would have impacted Mr. McCullough?

1       A.           I don't think I could tell you  
2       specifically each lawsuit by lawsuit. I can tell  
3       you in a general way that if you have chronic  
4       stress that that is often worse than a specific  
5       episode of stress because it doesn't go away. So  
6       if you have stress across time, it will feel as if  
7       you can't escape it.

8                   Then, if you have specific  
9       instances of stress, again, that gets your  
10      adrenalin running and gets you ready to deal with  
11      a threat. So you might, then, have little  
12      flare-ups where your symptoms get worse.

13                   Both will impact a person, and yet  
14      the chronic stuff will start to make people feel  
15      as if they can't escape and their situation is  
16      hopeless. That's a very difficult thing for  
17      anyone to deal with psychologically.

18      Q.           In your report, you talked about Mr.  
19      McCullough had been sued and then he prevailed and  
20      unfortunately the problems didn't go away.

21                   In terms of this chronic stress,  
22      how would it have impacted Mr. McCullough, if at  
23      all, to think it was finally done and the lawsuit  
24      was over only to get sued a second time?

25      A.           Again, to me that relates the sense of



1       hopelessness that you think you resolved  
2       something, you think it has gone away and it comes  
3       right back again. And you wouldn't know how you  
4       could resolve the situation.

5       Q.       In your opinion, Dr. Veraldi, was Timothy  
6       McCollough more vulnerable to being a recipient of  
7       a frivolous lawsuit than most people would be?

8       A.       I cannot tell you -- you mean more  
9       frivolous to someone suing him or more frivolous  
10      to the effects of a lawsuit?

11      Q.       No, frivolous with respect to the  
12      substance of the lawsuit. How about any lawsuit?

13      A.       Is he more vulnerable to someone suing  
14      him?

15      Q.       Correct, than the average person.

16      A.       I don't know if I could tell you that  
17      because that's probably outside my area of  
18      expertise. But he is somebody who is a more  
19      vulnerable individual in negotiating the world.  
20      So he may be more vulnerable to any types of  
21      problems. But I can't tell you he is more or less  
22      likely to be sued than other people.

23      Q.       No, no.

24      A.       Oh, I'm sorry.

25      Q.       That's okay. Is he someone who would

1 react differently than an average mentally healthy  
2 person?

3 A. Well, anyone with a personality disorder  
4 doesn't cope very well. So they tend to fall  
5 apart more under stress. It's harder for them to  
6 pull themselves together and they tend to get  
7 stuck in their emotional reactions to stress for a  
8 longer period of time. By definition, they often  
9 don't come up as good at problem-solving as the  
10 average person. So when you put them under  
11 stress, it hits them harder.

12 MR. HEENAN: No further  
13 questions. Thank you, Dr. Veraldi.

14 THE COURT: You may  
15 cross-examine.

16 MR. BOHYER: Thank you, Your  
17 Honor.

18 CROSS-EXAMINATION

19 BY MR. BOHYER:

20 Q. Dr. Veraldi, good morning. You and I  
21 haven't met before. My name is John Bohyer. I  
22 represent the defendants in this case, Johnson,  
23 Rodenburg & Lauinger.

24 A. Okay.

25 Q. Okay? You have your report in front of

VK LEYENDECKER, LLC  
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1       you?

2       A.           Yes, I do.

3       Q.           Okay. I want to go through some of the  
4       diagnoses first, if I may, Dr. Veraldi.

5                   Actually let me switch gears  
6       before I do that.

7                   In terms of the practice of  
8       psychology that you're engaged in these days, is  
9       it more forensic or is it clinical, treating  
10      patients?

11      A.           It's more forensic. I would consider  
12      myself a forensic psychologist.

13      Q.           And what you're doing here today is part  
14      of forensic psychology?

15      A.           Yes, it is.

16      Q.           Forensic psychologists, they investigate  
17      things and they testify in court.

18      A.           Yes, anything to do with the legal system  
19      or legal opinions is forensic psychology.

20      Q.           I apologize if this was asked on direct,  
21      but the cost of your services to testify today?

22      A.           \$175 per hour.

23      Q.           Is there a minimum half day or full day?

24      A.           No.

25      Q.           Did you meet with Mr. Heenan to discuss

1 Mr. McCullough's case?

2 A. Yes, I did.

3 Q. Can you tell me how many times?

4 A. I met with him only once, and that was  
5 after I evaluated Mr. McCullough. But subsequent  
6 to evaluating Mr. McCullough, I probably spoke to  
7 him on the phone several times, I think.

8 Q. Did Mr. Heenan have any input into the  
9 opinions you framed?

10 A. Only in the questions that he asked me to  
11 address.

12 Q. Fair enough. Now, to your diagnoses,  
13 please. I'm on page 14 of your report.

14 You indicated on direct exam you  
15 could not diagnose depression.

16 A. Other than an adjustment disorder, no, I  
17 didn't think there were enough symptoms here to  
18 diagnose dysthymia, major depression, depressive  
19 disorder, yeah.

20 Q. There were questions asked of you that  
21 indicated that you had seen him 18 months after  
22 this was going on. Do you remember those?

23 A. Yes, 18 months after the sort of the final  
24 lawsuit, I believe. I believe there were some  
25 ongoing things, yes, but it was 18 months after

1 everything was -- after that period of time.

2 Q. So I think I heard you say that you saw  
3 him as the stress was coming down, not at the  
4 peak. Correct?

5 A. That's probably the case, yes.

6 Q. And you would say -- and it was 18 months,  
7 your understanding, when the suit was finally  
8 wrapped up, 18 months prior?

9 A. That was my understanding, yes.

10 Q. Assume for a moment the suit was actually  
11 done seven or eight months prior.

12 A. Okay.

13 Q. So you will be closer in time to the peak  
14 of that stress, aren't you?

15 A. That would be.

16 Q. So no depression diagnosed. And then you  
17 said, generalized anxiety disorder. Did that  
18 preexist 2006?

19 A. Oh, yes.

20 Q. Any of the diagnoses that you made here --  
21 let me rephrase that. Did all of the diagnoses  
22 that you made here preexist 2006?

23 A. Oh, yes, they did.

24 Q. So the symptoms, the psychological  
25 diagnoses, predated anything that my client had to

1 do with Mr. McCullough?

2 A. I believe that they all did, yes.

3 Q. Did you treat Mr. McCullough?

4 A. No, I did not.

5 Q. In terms of your opinions about the  
6 debt-collection lawsuit causing stress to Mr.  
7 McCullough, did you see Mr. McCullough the day  
8 before the lawsuit was filed?

9 A. No, I did not.

10 Q. Did you see him at any time while the  
11 lawsuit was pending?

12 A. To the best of my knowledge, no.

13 Q. So would you agree with me you're making  
14 some significant assumptions as to what he may or  
15 may not have been going through during the  
16 lawsuit?

17 A. You're making some judgements about that,  
18 yes.

19 Q. Did you speak with any of Mr. McCullough's  
20 treating physicians?

21 A. No, I did not.

22 Q. Would they be good sources of information  
23 regarding his condition?

24 A. I don't know that they would in addition  
25 to their very good reports and notes that were

1 provided to me.

2 Q. Do you treat any patients presently?

3 A. Yes, I do.

4 Q. Roughly how many?

5 A. I would say, actual clinical treatment, I  
6 probably see five clients a week one way or the  
7 other.

8 Q. Would you agree with me that Mr.  
9 McCullough's stress level or mental state could  
10 have been the same before the debt-collection  
11 process as it was after?

12 A. Stress levels don't remain the same level  
13 for anybody for anything. He could have had  
14 periods before the debt collection where he had  
15 episodes of higher stress. He could have had  
16 lower stress and then higher stress during the  
17 process of the debt collection. Stress goes up  
18 and down. So indeed, it could have been at  
19 different levels at different times.

20 Q. I guess the point I'm trying to make, you  
21 don't know?

22 A. No, I don't know during that time. I  
23 would have to make judgements after the fact.

24 Q. Some questions were asked of you how  
25 financial stress affects people. I assume you

1 would agree with me, Dr. Veraldi, that folks who  
2 get in over their head with debt are stressed,  
3 irrespective if they are subject to a  
4 debt-collection suit or not.

5 A. Yes, that would be a form of financial  
6 stress, yes.

7 Q. Irrespective of whether or not they suffer  
8 from some mental illness?

9 A. That is also true.

10 Q. In fact, in your interviews with Mr.  
11 McCullough and your review of the records, you  
12 noted that he was having financial stress with  
13 debt as far as back as the 1990s.

14 A. Yes.

15 Q. And that he had been through situations  
16 with credit card debt prior, even back then.

17 A. That was my understanding was that there  
18 were problems in the early nineties, when he left  
19 his job, yes. That's when he told me the problem  
20 with the credit cards began.

21 Q. Would you agree with me, Dr. Veraldi, Mr.  
22 McCullough's stress and mental state could have  
23 been from the fact that he incurred the debts, as  
24 opposed to having to deal with the debt-collection  
25 lawsuit?



1       A.           From what he told me, he said he had made  
2       arrangements to pay off the majority of his credit  
3       card debts and was able to resolve those. So he  
4       had indicated that while that was stressful that  
5       was a situation he felt he had some plan at least  
6       to manage.

7       Q.           Would you agree with me that it may be  
8       difficult to determine what is going on with Mr.  
9       McCullough?

10      A.           He is an enigma, yes. It is often  
11      difficult to know what all is going on.

12      Q.           In terms of the various testing that you  
13      conducted for Mr. McCullough, how long did that  
14      take, roughly?

15      A.           Well, various of it takes various times.  
16      I would probably spend around an hour one side or  
17      the other talking to him; less time than that  
18      speaking to his wife. The Rorschach takes about  
19      an hour. I administer it face-to-face. The other  
20      tests are paper-and-pencil tests administered in  
21      my office and it takes some number of hours.

22      Q.           Would you agree with me that his validity  
23      scales on these tests reflect a tendency on his  
24      part to respond inconsistently?

25      A.           That was one test. That was the

1       Personality Assessment Inventory, and yes, the  
2       validity scale indicated that there was tendency  
3       to respond inconsistently on that particular test.

4       Q.       And that brings into the question, then,  
5       the reliability of the results you get from those  
6       tests, true?

7       A.       It was at a level that said you should  
8       interpret those tests with caution but that you  
9       can still utilize that information. Yes, that is  
10      correct.

11      Q.       When we talk about the reliability or the  
12      tendency to respond inconsistently, are we talking  
13      about the truth and accuracy of the responses  
14      provided?

15      A.       That's not so much having to do with truth  
16      but it's sort of a pattern of responding. There  
17      are a number of validity scales on the Personality  
18      Assessment Inventory and that one simply is not  
19      saying whether or not he is telling the truth. It  
20      is picking up much more on, is he able to read the  
21      questions, is he able to sustain his  
22      concentration, does he tend to contradict himself  
23      in his answers?

24                      So mental health people are not  
25      experts in truth and I won't put myself out as

1       that. We don't have tests of that.

2       Q.       You want, of course, this jury to be able  
3       to make its decision based on reliable  
4       information.

5       A.       I can tell you about reliability and  
6       validity. I'm not an expert in truth versus lies.

7       Q.       I want to ask some specific questions  
8       about history that Mr. McCullough provided to you,  
9       recognizing that some of these are rather  
10      sensitive, and I will try to be cognizant of that.  
11      And this, I guess, would come into the nature of  
12      reliability or accuracy.

13                    You took a rather lengthy history  
14      from Mr. McCullough. True?

15      A.       Yes, I did.

16      Q.       At one point he told you, he reiterated to  
17      you, a bunch of alleged injuries he had sustained  
18      in his past?

19      A.       That's right.

20      Q.       One of those was that he had sustained  
21      first- , second- and third-degree burns over 25  
22      percent of his body?

23      A.       That's right.

24      Q.       And he told you, didn't he, that he didn't  
25      get any medical treatment for that?

1 A. That's right.

2 Q. And that came as a surprise to you, I  
3 guess.

4 A. I didn't think that was a reliable report.  
5 Didn't make sense to me.

6 Q. That's because third-degree burns require  
7 extensive treatment?

8 A. That's my limited medical understanding.  
9 That's what I understand about them, yes.

10 Q. Rather than get the medical treatment, he  
11 told you that he jumped into a brine freeze tank,  
12 something like that?

13 A. Yes.

14 Q. I think he also told you that he sustained  
15 multiple knife wounds in the past.

16 A. That's correct.

17 Q. And no medical treatment for those either?

18 A. When I asked him, he told me the knife  
19 wounds were not life-threatening.

20 Q. Did you interpret that to mean he had not  
21 obtained medical treatment for that?

22 A. He did not obtain medical treatment, that  
23 is right.

24 Q. Did you question the accuracy or  
25 reliability of the statements he made?

1       A.           I believe he was not a reliable historian,  
2       but I believe those sorts of statements were what  
3       we call diagnostic. They fit with the  
4       narcicisstic personality diagnostic criteria.  
5       They were those sorts of statements. And also  
6       with the schizotypal stuff, he is either  
7       misperceiving or he is exaggerating or grandiose  
8       or something. These don't make sense.

9       Q.           In terms of your use of the word grandiose  
10      or grandiosity, can that mean both on the good  
11      side and bad, the statements of grandiosity? I'm  
12      doing very well, I've made great achievements, or,  
13      something very bad has happened to me.

14     A.           Yes, something very bad has happened to  
15      me. Most grandiose statements don't say, I've  
16      done very badly. There is always the need, in  
17      making those statements, to make yourself look  
18      very good. Something very bad happened to me, but  
19      I handled it very, very well.

20     Q.           So grandiose can mean both. I am quite  
21      accomplished. I've done something very well. Or,  
22      something bad has happened to me and I've dealt  
23      with it well.

24     A.           Yes.

25     Q.           He also indicated to you that he had been

1 shot twice?

2 A. Yes.

3 Q. And he had no medical treatment for that?

4 A. Well, then, again, he would make the  
5 statements and I would ask him about medical  
6 treatment. When I asked him about the two bullet  
7 wounds, he said, "Oh, well, they didn't penetrate  
8 my clothes because I was wearing heavy clothes."

9 So when he would make these  
10 statements and then I would question them, he  
11 would back off.

12 Q. He told you he had had 27 broken bones and  
13 a split sternum over the years?

14 A. Yes.

15 Q. Did you consider that to be an accurate or  
16 reliable statement?

17 A. I would not have placed great weight on it  
18 unless I saw corroborating medical records.

19 Q. You made some reference, Dr. Veraldi, to  
20 an alleged head injury.

21 A. Yes.

22 Q. And Mr. McCullough had told you that in  
23 about 1990 someone hit him in the head with an  
24 iron bar?

25 A. That's right.

1 Q. You looked at his medical records from  
2 that time period, correct?

3 A. That's right.

4 Q. And you noted that the medical examination  
5 did not substantiate a head injury?

6 A. That's right.

7 Q. Meaning that, when he goes into the ER,  
8 they are looking at him. You look at the records  
9 and they don't find that he's been hit in the head  
10 with an iron bar.

11 A. Well, they don't find that because you can  
12 get a mild traumatic brain injury without loss of  
13 consciousness and no amnesia. So what we find is  
14 there can be medical evaluations of head injuries.  
15 You don't see anything on CAT scans, MRIs, that  
16 sort of thing. The person doesn't come in  
17 unconscious.

18 But then, with neuropsychological  
19 testing, you might see some evidence of that, as  
20 happened with Dr. Tomkins.

21 So he didn't have something severe  
22 that could be found with medical evaluation, but  
23 he did appear to have some alteration in his brain  
24 functioning that was picked up by  
25 neuropsychological testing, which is far more

1 sensitive.

2 Q. Let me kind of explore that a little bit.

3 When you note the medical examination did not  
4 substantiate an injury, you said there was nothing  
5 picked up on the CAT scan or anything else.

6 There wasn't a note that he had a  
7 big bruise on his head?

8 A. No.

9 Q. There wasn't a note that he had a  
10 laceration?

11 A. No.

12 Q. Would you expect to see a bump on the  
13 head, or a bruise or a cut, if someone got whacked  
14 over the head with an iron bar to cause brain  
15 injury?

16 A. You're asking me several questions.  
17 First, medically I can't tell you what the  
18 probable injury would be. But as a person who  
19 does neuropsychological testing, I can tell you  
20 that people who often don't have any observable  
21 medical injuries, when given neuropsychological  
22 tests, will show some alteration in brain  
23 functioning.

24 The reason for that is our brains  
25 have all these little connections in them.



1 Sometimes you get wonked on the head and you get  
2 this diffuse axonal damage. It doesn't show up on  
3 a CAT scan, you don't see lacerations, you don't  
4 see bumps, but in testing people afterwards, you  
5 see alteration in brain functioning. So I only  
6 know from what I do that I test people with  
7 neuropsychological tests, even when the medical  
8 records would say nothing happened, and they still  
9 have alterations in functioning.

10 Q. Would a report to you of getting hit in  
11 the head with an iron bar and there not being any  
12 indication of any medical evidence that this  
13 occurred, would that also be consistent with how  
14 he reported third-degree burns, knife wounds and  
15 being shot?

16 A. I have significant questions about his  
17 being able to tell me what actually happened. But  
18 I believe in Dr. Tomkins, who did the  
19 neuropsychological testing and said something  
20 happened. I don't believe Mr. McCullough's  
21 report. I believe his medical records.

22 Q. The psychological records?

23 A. Well, I consider that part of the medical  
24 records. I believe the psychological records.

25 Q. I just want to make that distinction for

1 the jury. Thank you.

2 Would the symptoms that he  
3 indicated you're looking at with Dr. Tomkins also  
4 be consistent with mental disease?

5 A. Some of them would be. The significant --  
6 the mild impairment on category trails B and some  
7 of the Wexler subtests are more likely to be  
8 related to cognitive problems than they are to be  
9 related to mental health issues.

10 Q. Dr. Veraldi, you also made notes in your  
11 report that Mr. McCullough had trained as an  
12 actor, as a stage actor. Do you recall that?

13 A. He told me he toured with a repertoire  
14 company, I believe, yes.

15 Q. He toured with, I think you've got here,  
16 the American Conservatory Theatre and a  
17 Shakespeare tour group.

18 A. That's right.

19 Q. Would his training as an actor give you  
20 any reason to question the reliability of what he  
21 tells you?

22 A. Again, I can't tell truth from lie.  
23 People lie to me all the time. I've about a 50-50  
24 percent rate of being able to tell truth from  
25 lies, like all the mental health people. So I

1       assume someone with training as an actor or as an  
2       actress would probably learn how to put on shows  
3       better.

4                       But to me, the greater concern is,  
5       what is his mental health diagnosis and how does  
6       he communicate with people? That to me was the  
7       greater concern.

8       Q.       You were also aware that he hadn't worked,  
9       I think, since the early 1990s. I believe I heard  
10      you say that on direct.

11     A.       That was my understanding, yes.

12     Q.       That has nothing to do with my client,  
13      true?

14     A.       That's nothing to do with your client.  
15      That happened with this other incident.

16     Q.       You also discussed him suffering some  
17      headaches. I think you discussed alcohol and drug  
18      abuse, or drug use, excuse me, in the context of  
19      that.

20                    He indicated to you that he would  
21      drink beer to thin his blood. True?

22     A.       Yes.

23     Q.       And he also indicated to you that he would  
24      drink a couple of shots of tequila with chili  
25      peppers for headaches.

1       A.           Yes.

2       Q.           I'm assuming, without knowing, I guess,  
3       are shots of tequila a recommended course of  
4       therapy to relieve headaches?

5       A.           We are getting outside my area of  
6       expertise. I'm guessing they probably aren't, but  
7       I am not sure.

8       Q.           Have shots of tequila relieved headaches  
9       for you over the years?

10      A.           I'm not much of a drinker.

11      Q.           Fair enough. You also interviewed his  
12      wife, Mrs. McCullough. True?

13      A.           Yes, I did.

14      Q.           I want to refer you to that a little bit,  
15      on page seven of your report. Claims here are  
16      being made with respect to some emotional distress  
17      that he may have suffered as a result of his  
18      encounter with my client. Page seven for your  
19      reference, Doctor.

20      A.           Okay.

21      Q.           I don't know how long your interview with  
22      Mrs. McCullough took. Can you reference that?

23      A.           Somewhere between, I'm guessing, 15  
24      minutes and a half-hour. It was not very long.

25      Q.           Would you agree with me that in the

1 paragraph where you address Mrs. McCullough's  
2 interview that nowhere within your report does she  
3 say that his stress level now is either worse or  
4 that it is as a result of the debt-collection  
5 process?

6 A. That's correct.

7 Q. When you interviewed Mr. McCullough, he  
8 told you that he had little general distress.  
9 True?

10 A. I believe that he did tell me that, yes.

11 Q. He told you that he had few complaints  
12 about anxiety and tension.

13 A. That's right.

14 Q. And in fact, you specifically inquired  
15 about stress and he reported to you that his life  
16 is stable, predictable and uneventful. Isn't that  
17 true?

18 A. That's true.

19 THE COURT: How much more do you  
20 have, Counsel?

21 MR. BOHYER: I'm almost done,  
22 Your Honor. Less than five minutes.

23 THE COURT: Okay. Go ahead.

24 BY MR. BOHYER:

25 Q. In terms of stress, is someone who is

1 reporting stable, predictable and uneventful  
2 things in life, that is what you and I would agree  
3 would be normal.

4 A. Well, again, that's why I do the  
5 psychological test. Because I don't consider him  
6 a very good reporter. So his psychological  
7 testing said something different than his reports  
8 to me, and I believe in my psychological tests.

9 Q. If a normal person says, I'm stable,  
10 things are predictable and uneventful, stress is  
11 okay in their life --

12 A. Might and might not be. Sometimes people  
13 don't tell you what is actually going on with  
14 them.

15 Q. Fair enough. You also conclude in your  
16 opinions and reports that Mr. McCullough's  
17 interpersonal maneuvers are an attempt to gain  
18 recognition and social approval.

19 A. That's right.

20 Q. Would the interpersonal maneuvers include  
21 this setting?

22 A. Very possibly could.

23 Q. If people don't approve of those  
24 maneuvers, that causes him anxiety?

25 A. That's my understanding from the testing,

1       yes.

2                       MR. BOHYER: Dr. Veraldi, I  
3       appreciate your time. Thank you very much.

4                       THE COURT: How much do you have,  
5       Mr. Heenan?

6                       MR. HEENAN: I have no questions,  
7       Your Honor. Let's take a lunch break.

8                       THE COURT: This witness may  
9       excused?

10                      MR. HEENAN: Yes.

11                      THE COURT: Thank you, Doctor.

12                      It is noon. We will take our  
13       noon recess. Is 1:15 okay with counsel? Is it  
14       okay with members of the jury? Let's be back  
15       here at 1:15.

16                      Do remember the admonitions I  
17       have given you before. Don't discuss the case  
18       with anyone, even your fellow jurors. Don't do  
19       any research, don't read any news reports, should  
20       there be any, and do keep an open mind until all  
21       the evidence has been submitted to you.

22                      We will be in recess until one  
23       15.

24                      (Lunch recess.)

25                      THE COURT: You may call your

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1 next witness, Mr. Heenan.

2 MR. HEENAN: Thank you, Your  
3 Honor. We would call Mr. McCullough to testify  
4 now.

5 THE COURT: Mr. McCullough,  
6 please come forward and be sworn.

7 TIMOTHY McCULLOUGH, having been duly sworn,  
8 was examined and testified as follows:

9 THE CLERK: Be seated, please.

10 DIRECT EXAMINATION

11 BY MR. HEENAN:

12 Q. Tim, will you please state your full name  
13 and address for the record.

14 A. M. Tim McCullough. That's  
15 M-c-C-u-l-l-o-u-g-h. I live at 1702 East 8th  
16 Street, Laurel, Montana.

17 Q. It's fair that I advised you before you  
18 took the stand that if you're having a problem or  
19 something that I'm asking that is confusing, stop  
20 me. Okay?

21 A. Yes.

22 Q. Are you employed, Tim?

23 A. No.

24 Q. How long since you were employed?

25 A. 1990.

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1 Q. What were you doing for employment in  
2 1990?

3 A. At that time I was working at the vo-tech  
4 as maintenance custodian engineer.

5 Q. Are you married?

6 A. Yes.

7 Q. How did you meet your wife?

8 A. We ended up both working at the vo-tech  
9 prior to the injury.

10 Q. You were both janitors or custodians?

11 A. We were custodians when it was School  
12 District II, and when it was sold to the State of  
13 Montana, we became maintenance engineers under  
14 their classification.

15 Q. What happened in 1990 that caused you to  
16 cease your employment?

17 A. We had been having a rash of break-ins and  
18 we had been reporting them, but there wasn't any  
19 evidence. No one wanted to follow up on it. We  
20 had security people come in and verify something  
21 was going on.

22 On May 9, 1990, I was doing a  
23 lockdown, going around checking the doors and  
24 making sure machines were shut off and the lights  
25 in certain parts of the shops were taken care of

1 and everything. We still had night classrooms up  
2 in the front going on, so I was doing the shop  
3 area. And I saw a shadow and he stood up and hit  
4 me.

5 Q. That's the last thing you remember?

6 A. Well, I don't remember passing out or  
7 anything like that, but the next thing I actually  
8 knew, everything was going around and I was on the  
9 floor.

10 Q. And then what happened after that in terms  
11 of --

12 A. I got up, worked my way to the nearest  
13 office and called the police.

14 Q. And then after that injury in May of 1990,  
15 did you have any symptoms?

16 A. Lots of them.

17 Q. And let's go --

18 A. Physical and mental.

19 Q. Let's go through the physical symptoms  
20 first.

21 A. I used to have very strong hands. I lost  
22 the grip in my right hand. I'm very dominant  
23 right-handed. I went down to something like an  
24 eight-pound grip. I have a problem with heights,  
25 altitude, so going to the mountains isn't

1 something I do very often anymore. I'm very  
2 claustrophobic and I admit I was a bit paranoid in  
3 my life --

4 Q. Prior to the head injury?

5 A. Prior to the head injury.

6 Q. Had you ever been diagnosed or received  
7 psychiatric treatment?

8 A. No. I've been evaluated for some of the  
9 jobs I've had in my life and I never had any  
10 problems passing those evaluations, so no, I never  
11 saw anybody for treatment.

12 Q. But you had, by your own admission, issues  
13 of paranoia prior to the injury?

14 A. According to the dictionary, paranoia is  
15 the unsubstantiated fear that someone is out to  
16 get you. I've asked many of the doctors over the  
17 years, what is it called if there's a possibility  
18 that it's substantiated?

19 Q. It's true that somebody is out to get you?

20 A. Yes. Is it paranoia or is looking over  
21 your shoulder a good thing?

22 Q. Did you think you looked over your  
23 shoulder the same as anyone else or more?

24 A. Probably a bit more.

25 Q. That was even prior to the head injury?

1       A.           That was prior to, but that was part of my  
2       background.

3       Q.           I don't want to get through your whole  
4       employment background, but I do want to ask you  
5       one question. Were you ever an actor?

6       A.           Not really, no. I stood in the background  
7       at casts if they needed a fill-in. I was studying  
8       lighting design, engineering stage design. That  
9       was my expertise; behind the set, not up on the  
10      stage itself.

11      Q.           You haven't received any type of formal  
12      training or been employed professionally in some  
13      capacity that would make you a professional  
14      witness?

15      A.           Well, I did have the occasion to be a  
16      background on like when they were making movies  
17      here. I did something like that out in  
18      California. I was background scene in a hobo camp  
19      in Days of Glory with David Caradine, but they  
20      even cut that out. I never made it to the screen.

21      Q.           So go ahead. I stopped you. What other  
22      physical symptoms did you have after the head  
23      injury? We talked about paranoia which is more of  
24      a mental, right?

25      A.           Well, when you're always looking over

1       your -- you start getting a twitch looking behind  
2       you all the time. I don't sleep.

3       Q.           What do you mean you don't sleep?

4       A.           Well, for probably the first five years I  
5       was lucky if I got two to three hours a night.  
6       Even today, I go to bed and sleep somewhere  
7       between three and four hours. I don't go to bed  
8       until three or five o'clock in the morning. When  
9       the sun comes up, I can go to sleep. I always  
10      spend the night listening.

11      Q.           What else in terms of physical symptoms,  
12      blood pressure?

13      A.           My blood pressure goes crazy. I get  
14      migraines that are off the scale. And my blood  
15      pressure goes up. My blood sugars go up. The  
16      cholesterol goes up.

17      Q.           Are you diabetic?

18      A.           I am now. Everything I used to do with  
19      the exercise and the work and all I can't do  
20      anymore, because if I raise my heart rate, I get a  
21      migraine. So I do everything I can to stay quiet,  
22      calm.

23      Q.           How about nonphysical repercussions from  
24      this head injury or since 1990?

25      A.           Well, it started out there was some things

1 I remembered vividly, like the injury. But parts  
2 of my past are still not there.

3 Q. You just don't remember?

4 A. I just don't remember. I can remember  
5 certain things, but I can't remember all that  
6 happened. Just scrambled my memory for a long  
7 time. It took a long time to get most of it back.

8 It was like every month of your  
9 life was a different jigsaw puzzle and you took  
10 all the pieces and threw it in the air, but if you  
11 took the picture away and put it back together  
12 again, there was a lot of bits and pieces to fit  
13 it back together.

14 Q. Let's talk about putting it back together.  
15 What was that recovery process?

16 A. A great deal of it was time. A great deal  
17 of it was, well, I had to learn how to read and  
18 write again. I had to go over -- I'm a really  
19 good bookkeeper for all of my stuff, at least I  
20 was back then, so I had an awful lot of  
21 documentation to go through to try to put things  
22 back together where I was with this, what  
23 relatives, that. Because of it, I ended up  
24 gathering together all the family photos and  
25 documents and bibles, everything I could to try to

1 put my family history and me in perspective.

2 Q. What is your wife's name?

3 A. Doraleen.

4 Q. Did she have a role in your recovery?

5 A. Oh, definitely. First year she gave up  
6 work in order to stay home and take care of me.  
7 We pulled our pensions out of the state and school  
8 district in order to use them to survive on.

9 She bought me models to get my  
10 hand-eye coordination again. She bought me puzzle  
11 books, crossword puzzles, find the word, to get me  
12 to actually be able to start concentrating on that  
13 aspect. She went out of the way to make sure I  
14 kept involved in the daily living.

15 Q. What do you mean by that?

16 A. Well, later on, after I had been at it a  
17 while, she let me do some of the paperwork around  
18 the house, sending this out, sending that out.

19 Q. Like paying a bill?

20 A. Well, you start out putting stamps on  
21 things and stickers, making sure it's labeled.  
22 And eventually, yeah, to paying the bills.

23 Q. Okay. Anything else that Doraleen was  
24 doing to help you recover?

25 A. She went and found anything that I was

1 interested in, anything that actually clicked.

2 Q. Like what?

3 A. Any dumb piece of information, trivia,  
4 stuff that no one would consider anything, pieces  
5 of history that were fun or funny or just totally  
6 out of place. She would buy those books and, hey,  
7 you know, these are interesting, you know, missing  
8 pieces from history. And I read them. I started  
9 increasing my reading again and having fun for a  
10 little bit.

11 Q. Did you get better?

12 A. For a while. And then --

13 Q. I mean, you're seeing a psychiatrist now.

14 A. I'm seeing a psychiatrist.

15 Q. You're having some --

16 A. Improvements. We go through an awful lot  
17 of drugs and medications. And at this particular  
18 point the wife is contacting my brother, who is a  
19 paramedic out in California at that time, and he  
20 is keeping her informed about the drugs and the  
21 levels I was taking. And he informed the wife  
22 that some of the drugs I was --

23 I'm getting toxic. I wasn't  
24 always this big. I was kind of slim. I've blown  
25 up and never gone down again.



1                   He informed the wife that I was  
2     taking drugs on a level they don't even give the  
3     psycho patients at Backerville (ph) Mental  
4     Hospital in California.

5                   So I started questioning the  
6     doctors and I wanted off some of those drugs. I  
7     was getting side effects that were not doing me  
8     any good. We have gone on to other doctors since  
9     then, like Carlson. I started out with a doctor  
10    called O'Neil.

11    Q.           So you quit at some point taking the  
12    meds --

13    A.           I quit at some point most of the drugs. I  
14    found I got along a lot better with natural  
15    medicines; less side effects, easier to control, I  
16    could take them more often.

17    Q.           Now, you heard Dr. Veraldi talk about some  
18    of the stress-related issues or diagnoses that  
19    she's given you. When you stop taking the drugs,  
20    what does that do with the stress?

21    A.           It ups it.

22    Q.           How so?

23    A.           Because it takes a long while to figure  
24    out what actually works in the homeopathic. You  
25    have to balance this with that, find out, hey,

1       there's a new drug that does that.

2       Q.       So what else do you do besides homeopathic  
3       to manage your stress level?

4       A.       It started by accident. I had a friend  
5       who had a rooster and a couple of turkeys. He had  
6       one extra rooster and two turkeys he couldn't  
7       butcher. He loved them too much. So he gave them  
8       to me, and my cousin gave me a goat. She could no  
9       longer keep it. She was within the city limits  
10      and needed to get rid of it.

11                       So I ended up taking care of  
12      animals and it kept enlarging and enlarging, and  
13      I've got another goat.

14      Q.       You have some goats and some turkeys?

15      A.       Right now I have one female. I'm supposed  
16      to pick up a male later on in the year for  
17      breeding purposes. I milk it and my wife makes  
18      cheese. I have chickens and turkeys -- right now  
19      I don't have any turkeys. I'm waiting for the  
20      chicks to arrive so I can start them.

21      Q.       To be fair, because I've been at out at  
22      your house, you're not a farmer. It's not a farm,  
23      right?

24      A.       No. I have just a hair underneath an  
25      acre. And I have birds. It calming. It's

1       relaxing. And I have to do it no matter how I  
2       feel. I have to get up. I have to go out and  
3       take care of the animals that day.

4       Q.           Is there --

5       A.           It's --

6                   THE COURT: Mr. McCullough, the  
7       court reporter can only take one of you talking  
8       at a time.

9                   MR. HEENAN: I'm sorry too, Your  
10      Honor.

11                  THE COURT: Let's just have Mr.  
12      Heenan finish his question and then you start  
13      your answer.

14                  Ask your next question, please.

15                  MR. HEENAN: Thank you, Your  
16      Honor.

17      BY MR. HEENAN:

18      Q.           So you're raising these chickens and  
19      turkeys, in your mind, as a sort of therapy for  
20      your stress?

21      A.           It's not just in my mind. I started this  
22      back with O'Neil, and he said it was the best  
23      therapy I had ever had, and I just continued it  
24      ever since.

25      Q.           What about with respect to staying at home

1 or not leaving the house? Is that part of your  
2 stress therapy?

3 A. Yeah, I don't bump into a lot of people.  
4 I don't have to worry about crowds getting me  
5 upset. If I don't come into Billings very often,  
6 I don't have to worry about bumping into people I  
7 don't want to bump into. Because they are  
8 associated with what happened after the head  
9 injury at the school.

10 Q. Do you go to the movies or concerts or on  
11 vacation?

12 A. Not per se. I had to go out to California  
13 last year because of a father in a nursing home.  
14 I wouldn't exactly call it a vacation, even though  
15 on the way we did stop by and visit my brother and  
16 the wife's sister and father.

17 Q. Is it fair to say that a normal day for  
18 Timothy McCollough is wake up, take care of your  
19 birds, don't leave the house?

20 A. Well, I try and get some things done in  
21 the yard. I'm about 10 years behind on all my  
22 plans.

23 Q. I kind of noticed that too.

24 A. And, you know, I watch movies to help  
25 relax me. I found with the initial head injury

1 and everything, if I put something on that I'm  
2 familiar with, old movie or something like that,  
3 it keeps me calm, keeps me relaxed, keeps my mind  
4 off of other things. It helps.

5 Q. First let me cover something. After this  
6 head injury, did you receive workman's  
7 compensation benefits?

8 A. Up until '94.

9 Q. Did you ultimately get approved for  
10 worker's compensation benefits?

11 A. Oh, I got approved for worker's  
12 compensation right off the end, but I had to fight  
13 them every inch of the way.

14 Q. For all the medical?

15 A. I had a lawyer, Tom Lynaugh, handle the  
16 situation and they -- every three, four months  
17 they would switch who was in charge of the case  
18 and we had to start all over again.

19 Q. How about with respect to Social Security  
20 disability benefits?

21 A. I didn't pay much attention to it until  
22 around the time Lynaugh instructed me, asked me  
23 whether I had Social Security benefits yet and I  
24 said I never even applied.

25 Q. So he helped you --

1       A.           He helped me set it up and they backdated  
2       the benefits to '92.

3       Q.           What year was it that you ultimately were  
4       approved for Social Security disability?

5       A.           The year it was actually approved, I  
6       think, was '94, about two, three months before  
7       worker's comp dropped me.

8       Q.           Do you have any understanding why it is  
9       you were approved for Social Security disability?

10      A.           Yeah.

11      Q.           Why?

12      A.           Part of it is the fact that I was  
13      instructed years ago to keep a calendar. On an  
14      average year, between headaches and sick because  
15      of the headaches or the blood pressure or whatever  
16      else, out of 365 days, I spent an average of 150  
17      down with a headache.

18      Q.           What do you mean "down"?

19      A.           Well, when a migraine comes on, you don't  
20      do anything to aggravate it or make it worse. And  
21      the number one thing you do is you lay down in the  
22      dark.

23      Q.           How long would you be down with migraines?

24      A.           Depends on the size of the migraine. It  
25      could be anywhere from six hours to 12 days.

1 Q. Any other reason besides the migraines  
2 that you were approved for Social Security  
3 disability?

4 A. Anger. They didn't want to take the  
5 chance of me bumping into one of the people that I  
6 considered an enemy.

7 Q. Is it fair to say after the head injury  
8 you considered a lot of people to be enemies, or  
9 no?

10 A. Not really a lot. But maybe about 10.  
11 And six of those I still consider an enemy.

12 Q. Let's talk about personal responsibility,  
13 okay?

14 A. All right.

15 Q. And financial responsibility.

16 A. All right.

17 Q. What were your finances like prior to  
18 1990?

19 A. Both the wife and I were working. We were  
20 living on a very good salary, both had benefits.  
21 We were in good shape.

22 Q. Paying your credit card bills on time?

23 A. At that particular time, I don't think I  
24 had very much on them at all. Yeah, they were all  
25 being paid on time.

1 Q. At what point did credit cards become a  
2 problem?

3 A. After the head injury, we didn't have the  
4 income like we had before and we leaned a little  
5 more on the credit cards for groceries, the basic  
6 needs.

7 Q. What were those basic needs? Groceries,  
8 what else?

9 A. In spite of my health, somewhere around  
10 '75 -- '95, the wife had to go in for surgery.  
11 What was originally thought two years earlier to  
12 be an ulcer turned out to be the colon had  
13 attached itself to the gallbladder and it was  
14 dumping bile directly into her system for two  
15 years.

16 Q. So she had to undergo surgery to correct  
17 that?

18 A. She had to undergo surgery and we used the  
19 credit cards to pay the bills.

20 Q. To pay the medical bills?

21 A. Yes.

22 Q. Did you get behind on your credit cards  
23 during this time period?

24 A. Yes, I did.

25 Q. And how behind?



1       A.           It's kind of hard to say how behind. I'm  
2       looking back, and I don't remember the exact  
3       numbers, but we had several credit cards at the  
4       time and we got behind on the bills. The ones  
5       that were willing to work with us, they all got  
6       paid.

7       Q.           What do you mean by that?

8       A.           Well, they were informed that I was  
9       disabled.

10      Q.           The credit card companies.

11      A.           Yes. And the cards were in my name.

12      Q.           Why would a credit card company care  
13      whether you were disabled or not?

14      A.           Because --

15                   MR. SIMPSON: Objection. This  
16      calls for speculation, Your Honor.

17                   THE COURT: Sustained, unless  
18      there is some foundation.

19      BY MR. HEENAN:

20      Q.           Did you have an understanding of why a  
21      credit card company would care to know whether you  
22      had been disabled?

23      A.           Well, initially it was because I wanted  
24      them to understand I was still trying to pay the  
25      bills. Later on, partially due to I have Prepaid

1 Legal --

2 Q. What is Prepaid Legal?

3 A. I pay 16 bucks a month and I have a lawyer  
4 on call with whatever firm Prepaid Legal is using  
5 that I can call up and get information, have my  
6 will done, reference to another lawyer, which is  
7 how I found you.

8 Q. But let me go back to these credit cards.  
9 You called the credit card companies.

10 A. We worked out payment plans.

11 THE COURT: Wait. There wasn't a  
12 question.

13 MR. HEENAN: Bear with me a  
14 second, Tim. I'm kind of a slow talker. You  
15 have to wait a second.

16 BY MR. HEENAN:

17 Q. You called the credit card companies to  
18 advise them you were disabled. You had been  
19 approved for Social Security disability. Is that  
20 correct?

21 A. That's correct.

22 Q. What specifically did you tell the credit  
23 card companies?

24 A. I would try to work with them if they  
25 would work with me and we would get these bills

1       paid off.

2       Q.       Were you aware, even when you were calling  
3       the credit card companies and telling them you  
4       would try to work with them and get these bills  
5       paid off, that they couldn't collect anything from  
6       you because you were Social Security disabled?

7       A.       Not at that time. I found out a little  
8       bit later.

9       Q.       How long later did you find out --

10      A.       Well, there was a point --

11      Q.       Wait a second. How long later did you  
12      find out that you might not have to repay anything  
13      because you had Social Security disability  
14      benefits?

15      A.       I'm not sure on the time line. But there  
16      was a time in there when I contacted one of those  
17      outfits that are supposed to help people with good  
18      credit. And they were gung ho behind doing it  
19      until they found out that I was disabled and my  
20      sole income was Social Security. Then they said I  
21      didn't need them. I went looking for information  
22      why.

23      Q.       What did you find out?

24      A.       That if somebody's sole income is  
25      disability, they can't take my money. They can't

1 force me to pay. They can't seize my house.

2 Because I'm under Montana Homestead Law. I put  
3 that on before the injury.

4 Q. At that point, did you say, aha, go away  
5 credit card companies. I don't owe you any money  
6 and I'm not going to pay.

7 A. No.

8 Q. What did you do?

9 A. I continued paying as best I could. I  
10 paid all up until '99.

11 Q. Why would you do that? Why would you keep  
12 paying even if you thought you didn't have to?

13 A. It wasn't a matter of didn't have to. It  
14 was the right thing.

15 Q. So why did you stop paying in 1999?

16 A. Well, it got to a point that they had  
17 slapped over 40 percent interest on what I paid.  
18 I'd been paying -- I paid back everything that I  
19 ever borrowed, plus interest, and I still had an  
20 outstanding debt because of 40 percent interest.  
21 My health was going downhill. They were calling  
22 around the clock.

23 Q. Let me stop you there. You had a couple  
24 of credit cards, right?

25 A. Yes.

1 Q. And all the other credit cards but Chase  
2 Bank worked out payment plans and you dealt with  
3 them?

4 A. I worked with them, yeah.

5 Q. And you got them to go away by paying them  
6 what you could pay them.

7 MR. SIMPSON: Objection, leading.

8 THE WITNESS: Yes.

9 THE COURT: Overruled.

10 THE WITNESS: I did my best that  
11 everybody was taken care of that I owed money to.

12 BY MR. HEENAN:

13 Q. There was one company that wouldn't work  
14 with you?

15 A. Yes.

16 Q. Who was that?

17 A. Chase.

18 Q. What did Chase do?

19 A. Chase turned over to collection.

20 Q. What did they do?

21 A. They didn't care anything about what my  
22 situation was or the fact that I was disabled.  
23 They called around the clock. They insulted me.

24 They used horrible language. They threatened --

25 Q. Hold on. When you say they called around

1 the clock, when would they call? How many times a  
2 day?

3 A. Four or five times in the day, anywhere  
4 from eight o'clock in the morning to 10 o'clock at  
5 night.

6 Q. How about horrible language? What kind of  
7 things would they say to you?

8 A. They called me all sorts of different  
9 words. I'm not going to repeat those. They told  
10 me I was going to jail, that they were going to  
11 seize this and seize that. At that time I already  
12 knew that they couldn't.

13 Q. To be fair, this isn't Johnson Rodenburg  
14 we are talking about?

15 A. No, no. This isn't Johnson Rodenburg.

16 Q. These are other debt collectors?

17 A. These are other debt collectors. But my  
18 health was going down. It was actually costing me  
19 more to maintain my health than they were asking.  
20 It wasn't worth continuing.

21 Q. Why didn't you just write them a check for  
22 \$3,000?

23 A. What \$3,000? I didn't have \$3,000.

24 Q. If you did, would you have written them a  
25 check and told them to go away?

1       A.           After what they did to me, no, I probably  
2       wouldn't. If I thought about it, I would have  
3       looked for a lawyer back then.

4       Q.           Why is it that you owed them money? Why  
5       would you not, even if you had the money, pay the  
6       debt collectors to go away?

7       A.           I figured at that point I informed them  
8       that they were doing more damage than the money  
9       was worth. It was costing me more to maintain  
10      myself than for them to behave themselves and get  
11      the money.

12      Q.           How about specifically -- you started to  
13      answer. These debt collectors trying to collect  
14      the Chase credit card, how exactly did that impact  
15      you or affect you and your recovery?

16                   MR. SIMPSON: I object. This is  
17      not relevant to the claim against my client.  
18      This has something to do with a party not a party  
19      to the lawsuit.

20                   THE COURT: Overruled. But I  
21      think we can go through it quickly.

22                   MR. HEENAN: Thank you, Your  
23      Honor.

24                   THE WITNESS: Massive migraines  
25      again, down in bed again, memory was starting to

1 skip out on me again. I was just having a hard  
2 time relating day to day.

3 BY MR. HEENAN:

4 Q. Then at some point you get sued on this  
5 Chase Manhattan account, right?

6 A. Yes.

7 Q. When was that? 2005 sound right?

8 A. That sounds right. Somebody out of Great  
9 Falls, Spencer or Smith or something like that.

10 Q. And did you file an answer?

11 A. Yes, I did.

12 Q. And what was the result of that lawsuit?

13 A. Trial was scheduled, and the day  
14 before -- well, not the day -- on Friday I dropped  
15 the case. On Saturday I showed up for the case --  
16 I mean Monday. I showed up for the case. I had  
17 not yet been notified that the case was dropped.  
18 I was given a copy of paper from the courthouse  
19 saying that the case had been dismissed. And  
20 that's how it was termed. It had been dismissed.  
21 It did not say with prejudice or without  
22 prejudice. I didn't know anything about that at  
23 the time.

24 Q. So after you saw the paperwork saying that  
25 the case had been dismissed, did you think you



1       were done dealing with this Chase Manhattan  
2       account?

3       A.       I did. I was waiting for the final letter  
4       from the judge, since I picked this paper up at  
5       the courthouse. And before even that arrived, I  
6       got a letter from another law firm representing  
7       the exact same case, asking for even more money.

8       Q.       Do you remember what that law firm was?

9       A.       It started with a C.

10      Q.       To be fair, it wasn't Johnson Rodenburg?

11      A.       No, it wasn't Johnson Rodenburg.

12      Q.       And this other law firm sent you a letter  
13      asking for more money on this?

14      A.       And I promptly told them I just went  
15      through court on this thing and they lost. Go  
16      away.

17      Q.       So did they go away?

18      A.       Yeah. I got a total of two letters from  
19      them. I responded to the second one and I haven't  
20      heard anything from them since.

21      Q.       What was the next thing that happened?

22      A.       About a year went by.

23      Q.       And then what happened?

24      A.       Oh, I got a couple of letters from Johnson  
25      Rodenburg. I didn't think anything of it. Just

1 looked at the price. Gee, the price has gone up  
2 again. It's almost \$10,000.

3 Q. How much was it the first time?

4 A. Somewhere around three, 4,000, something  
5 like that.

6 Q. You didn't respond to those letters from  
7 Johnson Rodenburg?

8 A. I figured they are a law firm. I mean,  
9 they are supposed to have the information. I had  
10 already gone to court. I already dealt with two  
11 law firms.

12 Q. Is it fair to say you didn't feel like you  
13 had to dignify them with a response?

14 A. No, they didn't deserve a response. If  
15 they didn't have the information, it wasn't my  
16 fault.

17 Q. Did you assume that at some point they  
18 would get the information and go away?

19 A. Well, it's always been my assumption that  
20 before you go to court, you have to have the  
21 proof. So I figured, before it got to that point,  
22 they would check out something. I mean, the  
23 outfit that they were representing, CACV, would at  
24 least let them know that this has already gone to  
25 court.

1 Q. Did Johnson Rodenburg go away after those  
2 letters that you got?

3 A. I got served.

4 Q. What do you mean you got served?

5 A. I was in the backyard with the chickens,  
6 the wife is in the house. There was a knock at  
7 the front door and she escorted the sheriff around  
8 to the back where I was at and he served the  
9 papers on me.

10 Q. Told you you've been served?

11 A. I've been served.

12 Q. Now, you had already been sued once  
13 before, so was it kind of no big deal because it  
14 was just another lawsuit?

15 A. I was mad. I had adrenalin going. I was  
16 mad.

17 Q. Was it a big deal to you?

18 A. Yes, it was a big deal. This has been  
19 taken care of not once but twice.

20 Q. What do you mean it had been taken care  
21 of?

22 A. The first time it was the court case and  
23 the fact that I informed the other one and they  
24 went away. I had already dealt with two law  
25 firms. I didn't figure I needed to deal with a

1 third.

2 Here we go again. I go into the  
3 courthouse. I go up to where I'd gone before.

4 Q. Let me --

5 A. It doesn't work.

6 Q. Let me stop you and let's go back to when  
7 the sheriff serves you with the papers. I want to  
8 talk about how that made you feel.

9 You talked about your adrenalin.  
10 Anything else?

11 A. When the adrenalin goes up, it triggers a  
12 migraine. So the blood pressure went up, the  
13 blood sugars went out of balance. I was in pain.

14 MR. HEENAN: Exhibit 30, please.

15 BY MR. HEENAN:

16 Q. You testified a little bit ago, Tim, that  
17 you keep a calendar.

18 A. The one I've got is a bit larger than  
19 that.

20 Q. And that's the screen that's been marked  
21 as Exhibit 30?

22 A. Yes. It doesn't show up very well.

23 Q. On this calendar, did you mark the  
24 instances after you had been served with the  
25 lawsuit?

1       A.           I presume so. I write down everything on  
2       the calendar. At least I try to.

3       Q.           Do you recall noting how you were feeling  
4       after you had been served with the lawsuit?

5       A.           I usually mark down if I have a major  
6       headache. I have a minor headache every day.

7       Q.           On the calendar, you circled in red the  
8       instances that are related.

9                   MR. HEENAN: If we could have up  
10       Plaintiff's Exhibit 30-6, please. I knew there  
11       was a method somehow to know what I was supposed  
12       to be looking at. It took me a minute to catch  
13       on.

14                   THE WITNESS: Is it possible to  
15       dim this a little bit?

16                   MR. HEENAN: Can we bring this  
17       up, this part here?

18       BY MR. HEENAN:

19       Q.           You circled on this calendar everything  
20       that had to do with Johnson Rodenburg?

21       A.           I believe so, yes.

22       Q.           And how you were feeling?

23       A.           Yes.

24       Q.           And you note it on here, Served, Chase.

25       A.           Yes.

1 Q. Was that being served with the lawsuit by  
2 Johnson Rodenburg?

3 A. It would be, yes.

4 Q. And you noted on there how you felt?

5 A. Yeah, I had to take a nap. I had a bigger  
6 headache than normal, yes. It's all on there.

7 MR. HEENAN: If we could back out  
8 of that, please. I want to pull up these whole  
9 weeks.

10 BY MR. HEENAN:

11 Q. Did you just take a little nap and your  
12 head felt better, after you had gotten served?

13 A. Four or five hours is a little better than  
14 a little nap. I laid down that long. Whether I  
15 slept that long is another question.

16 Q. On my copy, it's hard to read on this one.  
17 It looks at the bottom, head bad, headache.

18 Was your head bothering you for a  
19 couple days after you had been served with the  
20 lawsuit?

21 A. Three or four, yes.

22 MR. HEENAN: Thank you.

23 BY MR. HEENAN:

24 Q. Was it frustrating to you to have been  
25 sued?

1       A.           Very.

2       Q.           And explain, from your perspective, what  
3       does that mean to be frustrated?

4       A.           It means the adrenalin is running again.  
5       My anger is coming out again. It means I snap at  
6       the wife, yell at the dog and I'm not a nice  
7       person.

8       Q.           It's a setback for you?

9       A.           Definitely.

10      Q.           In reaction to this lawsuit, you put  
11      together an answer that we have looked at already,  
12      the jury's already looked at. Right?

13      A.           It was a little more difficult than that.

14      Q.           How so?

15      A.           I went to the court I normally go to and  
16      I've been to before and they promptly tell me, we  
17      are in a different court.

18      Q.           Let me stop you there. The one you had  
19      been to before the first time you had gotten sued?

20      A.           Yes.

21      Q.           That's justice court?

22      A.           Yes.

23      Q.           What happened?

24      A.           They said, this is the wrong one. You've  
25      got to go to a different floor. I go up there and

1       they have a different form I have to fill out and  
2       I have to fill out in a different form. And from  
3       there on it was cutting and pasting and copying in  
4       order to get this close to a good-looking form  
5       instead of sloppy handwritten undistinguishable  
6       letters. It took me two days. I had to go to the  
7       courthouse the next day in order to get it filed.

8       Q.       You paid your filing fee?

9       A.       Paid my filing fee.

10      Q.       Filed your answer?

11      A.       I filed my answer.

12      Q.       And you sent it to Johnson Rodenburg?

13      A.       Certified mail.

14      Q.       You told Johnson Rodenburg that you were  
15      on Social Security disability?

16      A.       Yes.

17      Q.       You told Johnson Rodenburg that the  
18      statute of limitations was up?

19      A.       Yes.

20                       MR. SIMPSON: Objection. These  
21      are leading questions.

22                       THE COURT: Overruled. But try  
23      not to lead.

24      BY MR. HEENAN:

25      Q.       What else did you tell Johnson Rodenburg



1 in your answer?

2 A. I asked the wonderful question whether I  
3 was going to have to sue them to have the thing go  
4 away so they would leave me alone and I can stay  
5 in peace. I even bothered to call --

6 Q. Hold on. Let's talk about the answer  
7 first.

8 MR. HEENAN: Can we have up  
9 Exhibit 3?

10 BY MR. HEENAN:

11 Q. We talked about statute of limitations.  
12 What else did you tell them?

13 A. I told them I was disabled, this is what I  
14 got a month, this is what my mortgage cost, which  
15 my check takes care of, and after all this time I  
16 was now a diabetic and I didn't have any  
17 insurance.

18 MR. HEENAN: Next page, please.

19 BY MR. HEENAN:

20 Q. You told them about what you just  
21 testified to?

22 A. I told them about how worker's comp  
23 stopped paying and how the collectors and how I  
24 did my very best and those that worked with me got  
25 paid and those that didn't didn't.

1 Q. And the history of this Chase account.

2 Right?

3 A. Yeah.

4 MR. HEENAN: Thank you.

5 BY MR. HEENAN:

6 Q. And then you told them -- down here, what  
7 did you tell them?

8 A. This is the third time that I have been  
9 brought to court. They have brought me to court  
10 on this account. The first two times, Judge  
11 Hernandez. When will it stop? Do I have to sue  
12 them so I can live quietly in pain?

13 Q. Now, you say two times. This was the  
14 second lawsuit, not the third. Right?

15 A. Well, it's the second time I've had to  
16 deal with a law firm on it. I considered the  
17 second one a threat, which is as good as the suit.

18 Q. So you sent that to Mr. Dendy?

19 A. Yes.

20 Q. What else did you do with regard to  
21 contacting them?

22 A. The day I sent the mail out I called his  
23 office to advise him it was on its way and I was  
24 past the statute of limitations. I didn't get to  
25 talk to him. I left it on the voice mail,

1       answering machine, whatever it was.

2       Q.       Did you assume it would go away at that  
3       point?

4       A.       Pretty much, yeah.

5       Q.       Did it go away?

6       A.       No.

7       Q.       Then what was the next thing that  
8       happened?

9       A.       I received a letter from them and the  
10      letter was nice and clear. It was totally useless  
11      and the adjoining papers were illegible. I have  
12      no idea what they said.

13                   MR. HEENAN: Let's look at  
14      Exhibit 511, please. That's not it. Sorry.  
15      Exhibit 4, please.

16      BY MR. HEENAN:

17      Q.       This is the letter that you're talking  
18      about?

19      A.       No, I don't think so. Is there a second  
20      page to this?

21      Q.       Yes.

22                   MR. HEENAN: Page two, please.

23      BY MR. HEENAN:

24      Q.       These are requests for admission?

25      A.       No, this was before that.

1 Q. Okay. What was that letter?

2 A. I think it was before that. It had, it  
3 said, Please review these documents and verify  
4 they are true.

5 Q. Did the documents make any sense to you?

6 A. You couldn't read it.

7 MR. HEENAN: Now, let's pull that  
8 Exhibit 4.

9 BY MR. HEENAN:

10 Q. At some point did you receive the  
11 requests for admission from Johnson Rodenburg?

12 A. Yeah, and perfect timing was on my side on  
13 this. I had set up an appointment to see you.  
14 And this arrived two days before the appointment.

15 Q. Did you know what to do with them before  
16 you saw me?

17 A. No.

18 Q. Did they make any sense to you?

19 A. Well, I understood a couple of the  
20 questions. At least I think I could have answered  
21 a couple of them without really having to work at  
22 it too hard, and some of them I couldn't  
23 understand altogether.

24 Q. Did you understand what would happen if  
25 you didn't respond to them?

1       A.           No. It didn't have any consequences that  
2       I remember on it, and it didn't have any time  
3       frame on it. So like I said, it was perfect  
4       timing. When I walked into your office, we talked  
5       and then I presented to you, "This is what I just  
6       got."

7       Q.           Did you hire me?

8       A.           On the spot.

9       Q.           What happened after you hired me?

10      A.           We sat down and --

11      Q.           I don't want you to talk about your  
12      conversations.

13      A.           No. No. We sat down and we went over it  
14      and I answered to the best I could and you sent it  
15      to them.

16                   MR. HEENAN: Let's pull up  
17      Exhibit 511, please.

18      BY MR. HEENAN:

19      Q.           Is this the response that you just  
20      testified about?

21                   MR. HEENAN: Just go to page two,  
22      please, or three.

23                   THE WITNESS: I think so, yeah,  
24      that would be the response.

25      BY MR. HEENAN:

VK LEYENDECKER, LLC  
20 Medicine Crow Road  
Columbus, Mt. 59019 - (406) 322-5061

1 Q. This is your signature?

2 A. That's my signature.

3 Q. I want to direct your attention to, well,  
4 this Request Number 19 says, No documents were  
5 attached to the requests for admission.

6 Do you know what I'm talking about  
7 there?

8 A. Requests for admission denied no documents  
9 were attached -- yeah, I never got anything that  
10 said anything in the way of proof other than an  
11 ink smear.

12 Q. What is this ink smear?

13 A. Evidently it's the credit card agreement  
14 with Chase. It's printed so bad you can't read  
15 it. I had absolutely no idea. I wouldn't know  
16 about the agreement with Chase anyway because I  
17 never agreed to them.

18 Q. Didn't you have a credit card contract  
19 with Chase Bank?

20 A. No, a credit card contract with Chemical  
21 Bank. Chase bought them.

22 Q. When did you open up a Chemical Bank  
23 credit card, if you can recall?

24 A. Well, they would have been prior to '94 so  
25 it could have been before '90. It could have been

1 after that. It was probably somewhere around  
2 '90 -- that was when we moved into the house and  
3 started looking at other things.

4 Q. This whole lawsuit that Johnson Rodenburg  
5 prosecuted against you from the time they served  
6 you with the papers until it got dismissed, did it  
7 cause you some anxiety?

8 A. Oh, definitely.

9 Q. How so?

10 A. Once again, my temper goes up. The  
11 adrenalin went up. The pain went up. I was  
12 snapping at the wife.

13 Q. What pain went up?

14 A. The migraines. Like I said, I've got a  
15 headache every day. In the 19 years since the  
16 injury, I've had four days, and I've got them on  
17 my calendar, four days when I haven't had a  
18 headache, when I haven't been in pain.

19 Q. What else?

20 A. More time down.

21 Q. What do you mean, "more time down"? On  
22 the couch?

23 A. On the bed. I don't lay on the couch. I  
24 haven't got one.

25 Q. What else?

1       A.           Well, I'm sure part of this has to do with  
2       how bad the diabetes came on, how fast, because  
3       when I'm in pain, I don't eat normal. Food, I  
4       can't taste it anyway. That was another wonderful  
5       side effect of the head injury. I go by textures  
6       nowadays and a few taste buds that are actually  
7       working. In order to help heal the pain, I eat  
8       chili peppers like candy. I go straight for the  
9       Capzasin.

10      Q.           Describe for the jury the frustration you  
11      felt and maybe still feel about the lawsuit that  
12      Johnson Rodenburg brought against you.

13      A.           I thought it was frivolous. I thought it  
14      was an insult.

15      Q.           Why do you say that?

16      A.           Because they were informed a long time ago  
17      what the problem was and they weren't willing to  
18      help. They weren't willing to work with me. They  
19      got me mad.

20      Q.           How about the anger? Did it make you  
21      angry that Johnson Rodenburg prosecuted against  
22      you?

23      A.           I was being shoved around. I don't like  
24      bullies. I never have.

25      Q.           Did you feel like Johnson Rodenburg was



1 bullying you?

2 A. They weren't using the foul language, but,  
3 yeah, here we go again. Just one more. It's the  
4 straw that broke the camel's back. I got mad.  
5 I'm still mad.

6 Q. You were in the courtroom yesterday and  
7 you heard Johnson Rodenburg's characterization  
8 that someone can run through a stop sign but  
9 doesn't actually hit the car going the other way.  
10 It might scare them a little bit.

11 Is that a fair characterization of  
12 the lawsuit that Johnson Rodenburg brought against  
13 you?

14 A. I wasn't in the car and I got hit.

15 Q. Say again?

16 A. I wasn't in the car and I got hit.

17 Q. What do you mean you got hit?

18 A. Well, using their same analysis, they ran  
19 over me. They didn't slow down and they didn't  
20 stop. If I hadn't gotten you as a lawyer, I would  
21 still be laying in the mud.

22 MR. HEENAN: No more questions.

23 Thank you.

24 THE COURT: You may

25 cross-examine.

1

2

3 CROSS-EXAMINATION

4 BY MR. SIMPSON:

5 Q. Good afternoon, Mr. McCullough. You  
6 remember we met six, seven months ago at your  
7 deposition?

8 A. Yes.

9 Q. And as you know, I represent Johnson,  
10 Rodenburg & Lauinger.

11 It's true that you did have a  
12 Chase Manhattan credit card, correct?

13 A. Yes.

14 Q. And you made purchases with that Chase  
15 Manhattan credit card, correct?

16 A. Correct.

17 Q. And you did not pay back all the money you  
18 owed on that account, correct?

19 A. I will dispute that. I paid back the  
20 money I owed and some of the interest I owed, but  
21 I didn't pay back all of the interest. So there  
22 was still money left on the account.

23 Q. You understood that when you took out the  
24 card you were required to pay the bill for your  
25 credit card accounts, correct?

1       A.           I didn't take out the card. It came after  
2       me. It bought the card I had.

3       Q.           You didn't stop using it at that time,  
4       correct?

5       A.           At that particular time, I had to use it.

6       Q.           And you spent the money on it?

7       A.           I spent the money on it.

8       Q.           Fair enough. You discussed with Mr.  
9       Heenan that my client sent you a letter before the  
10      lawsuit was filed. Is that right?

11      A.           That's correct.

12                   MR. SIMPSON: Bring up 504,  
13      please.

14                   This has been admitted into  
15      evidence already, Your Honor.

16      BY MR. SIMPSON:

17      Q.           Is that the letter you received?

18                   MR. SIMPSON: If you could bring  
19      up the text.

20                   THE WITNESS: Yes, that's --

21      BY MR. SIMPSON:

22      Q.           That's the letter. And I think you  
23      testified earlier, but I want to confirm. You  
24      didn't respond to the letter, correct?

25      A.           No, I didn't.

1 Q. The letter told you that if you dispute  
2 the debt, the validity of the debt or any portion  
3 of the debt, notify us within 30 days. Right?

4 A. Yes.

5 Q. And in fact you didn't contact my client  
6 because you knew the statute of limitations was  
7 up. Correct?

8 A. That's correct.

9 Q. In this case, in fact, you believe that in  
10 addition to my client, you believe you were  
11 wronged by CACV of Colorado, right?

12 A. Yes.

13 Q. And in fact, in your words, CACV was just  
14 a bunch of greedy money grubbers, correct?

15 A. That's correct.

16 Q. And you're not claiming in this suit that  
17 my client, Johnson, Rodenburg & Lauinger, used any  
18 threats, vulgarities or lies in their dealings  
19 with you, true?

20 A. Well, I'd probably say due to the \$75 you  
21 said I had paid, I would say the lie is still out  
22 there.

23 Q. They never used any threats to you?

24 A. They never used any threats.

25 Q. They never used any vulgarity?

1       A.           Never used any vulgarity.

2       Q.           They never called to harass you to pay the  
3       bill?

4       A.           No.

5       Q.           So it's a disagreement or mistake,  
6       according to my client, as to when that payment  
7       was made, right?

8       A.           Your client is a law firm. I expect  
9       higher standards from a law firm than I do from a  
10      civilian.

11      Q.           I want to ask you about that. When you  
12      filed your answer in the first case that was filed  
13      against you by Mr. Spencer, do you remember that?

14      A.           Some of it, yes.

15      Q.           You remember there was another suit filed  
16      against you?

17      A.           Right afterwards.

18      Q.           The first lawsuit. Do you recall there  
19      was another lawsuit that was filed against you and  
20      you filed an answer? Do you remember that?

21      A.           I remember filing the answer with Spencer.

22      Q.           Right. That's the one I'm talking about.

23      A.           Yeah.

24      Q.           You would expect that a law firm, as well  
25      as a party like yourself that is unrepresented,

1 would only make true statements in their pleadings  
2 to the Court. Correct?

3 A. That's correct.

4 Q. In fact, you didn't make true statements  
5 in your pleading in that case, did you?

6 A. I don't know what you're talking about.

7 Q. Let's take a look at Plaintiff's Exhibit  
8 1.

9 MR. SIMPSON: I apologize for the  
10 delay. And can you bring up the lower half  
11 there?

12 BY MR. SIMPSON:

13 Q. First of all, can you identify this is in  
14 fact the answer that you filed in that case?

15 A. I can't read it so I can't tell you.

16 Q. I will bring it up here.

17 MR. SIMPSON: Bring up his  
18 signature too, please.

19 THE WITNESS: I can verify that's  
20 my signature.

21 BY MR. SIMPSON:

22 Q. That's your handwriting?

23 A. It's my handwriting.

24 Q. That's your answer in that earlier case,  
25 correct?

1       A.           I believe so.

2       Q.           And that's *CACV v. Tim McCullough*, and you  
3       said in that case, Statute of limitations is up.  
4       I've had no dealings with any credit cards in  
5       eight and one half years.

6                   Is that right?

7       A.           That's what I said.

8       Q.           That's what you said in that case?

9       A.           That's what I said.

10      Q.           And you represented that to the Court?

11      A.           And I represented that to the Court.

12      Turns out it was still past the statute of  
13      limitations, merely got the dates wrong.

14      Q.           You in fact made an untrue statement in  
15      that statement, didn't you?

16      A.           I made an accident.

17      Q.           You represent it was eight and a half  
18      years, and it was less than eight and a half  
19      years.

20      A.           It was five years.

21      Q.           It was five years or less?

22      A.           It was over five years. I've got the last  
23      check I wrote. It was over five years.

24      Q.           If --

25      A.           I went back and dug it out.

1 Q. It was in August of 2000 when you made the  
2 last payment, true, on this account?

3 A. No. Checkbook I've got it was January or  
4 February of 2000.

5 MR. SIMPSON: Well, Your Honor,  
6 if there were checks reflecting payments, they  
7 should have been produced and they were not.

8 THE COURT: That's something we  
9 can deal with later. Keep with your examination,  
10 please.

11 MR. SIMPSON: Thank you.

12 BY MR. SIMPSON:

13 Q. In fact, you said the same thing in the  
14 answer you filed in this case, didn't you?

15 A. Like I told you, I cut the thing up and I  
16 pasted it on and I made copies. I didn't change  
17 very little at all.

18 Q. So you said, again, in June of 2007, eight  
19 and a half years, correct?

20 A. Yes.

21 Q. That wasn't true, was it?

22 A. 2007? Seven years. I'm going off of a  
23 bad memory. And at that time I didn't look at any  
24 of the documents.

25 Q. You didn't intend to mislead anybody, did



1       you?

2       A.           No.

3       Q.           So it's possible, mistakes are made, true?

4       A.           I've got a head injury. What's your  
5       client's excuse?

6       Q.           Well, you will hear about that. You  
7       didn't seek any care from any doctors because of  
8       the migraines or emotional distress that you're  
9       claiming in the case, did you?

10      A.           I've been dealing with this since 1990.

11                   THE COURT: Mr. McCullough, I  
12      know sometimes it's difficult, but it's very  
13      important that you listen to the question that is  
14      asked and then limit your answer to just  
15      answering that question. And then, if there's a  
16      necessity to follow up, Mr. Heenan will have an  
17      opportunity to do that.

18                   So would you please read the  
19      question back?

20                   (Designated question is read.)

21                   THE WITNESS: I have regularly  
22      scheduled doctor appointments that I went to. I  
23      didn't change that. I didn't add to it. No, I  
24      did not seek any additional at that time.

25      BY MR. SIMPSON:

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1 Q. And you didn't seek any counseling or  
2 psychological assistance from your emotional  
3 distress, true?

4 A. Not at that time.

5 Q. And you can't recall whether your claimed  
6 emotional distress caused any change in your daily  
7 routine, right?

8 A. That's what the calendar is for.

9 Q. And in fact, although you claim that you  
10 increased the medications that you were on because  
11 of the emotional distress, you don't have any  
12 record of that, true?

13 A. No, I do not keep track of the  
14 medications.

15 Q. You have a very detailed calendar that you  
16 keep, true?

17 A. As detailed as I can fit in the space,  
18 yes.

19 Q. You don't keep track of the medication  
20 you're on?

21 A. No.

22 Q. You and Mrs. McCullough have had some  
23 rough time over the last year or so, aside from  
24 this lawsuit, true?

25 A. Yes.

1 Q. In fact, she's had a medical condition of  
2 her own, true?

3 A. Yes.

4 Q. And that's caused you stress, hasn't it?

5 A. Yes.

6 Q. That's caused an increase in your blood  
7 pressure and migraines, has it not?

8 A. At times, yes.

9 Q. I think I heard this correctly earlier,  
10 but I want to make sure. You said that you've  
11 been keeping a calendar to track your headaches  
12 since your head injury in 1990?

13 A. Well, it doesn't go all the way back to  
14 the first year. They didn't have me start that  
15 until I think the second or third year.

16 Q. And I think you told me at your  
17 deposition -- and maybe you testified the same  
18 here earlier, but I wanted to make sure I  
19 understood this -- you took a look at your  
20 calendar and you figured out there have been only  
21 four days where you haven't had some kind of pain  
22 since the attack. Is that right?

23 A. I don't need the calendar for that. You  
24 don't forget the days you don't hurt when they are  
25 that few and that far between. I haven't had

1       those days exist since the first two years.

2       Q.       It's basically been continuous since 1990?

3       A.       At one level or another, yes.

4       Q.       The discussion that you had with Mr.  
5       Heenan about the debt-collection efforts by Chase  
6       Manhattan before my client was involved in this,  
7       you didn't seek any treatment for that distress,  
8       did you?

9       A.       I don't believe I, did no.

10                       MR. SIMPSON:   Just one moment,  
11       please.

12                       Mr. McCullough, I know this is  
13       trying for you so I'm going to tell you, I'm  
14       finished.

15                       MR. HEENAN:   No redirect, Your  
16       Honor.

17                       THE COURT:   Mr. McCullough, you  
18       may step down.

19                       MR. HEENAN:   Plaintiff will call,  
20       Lisa Lauinger.

21                       THE COURT:   Ms. Lauinger, will  
22       you please come forward and be sworn.

23                       LISA LAUINGER, having been duly sworn, was  
24       examined and testified as follows:

25                       THE CLERK:   Have a seat, please.

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1

2

3 DIRECT EXAMINATION

4 BY MR. HEENAN:

5 Q. Good afternoon, Ms. Lauinger.

6 A. Hello.

7 Q. You're a lawyer at the Johnson, Rodenburg  
8 & Lauinger law firm?

9 A. Yes, I am.

10 Q. And the Johnson, Rodenburg & Lauinger law  
11 firm is a defendant in this case?

12 A. Yes.

13 Q. You yourself are not a defendant in this  
14 case, right?

15 A. No.

16 Q. You're here as the representative of the  
17 Johnson, Rodenburg & Lauinger law firm?

18 A. Yes.

19 Q. What percentage of the lawsuits that  
20 Johnson, Rodenburg & Lauinger file in the state of  
21 Montana result in default judgements?

22 A. I have not pulled the numbers, as I stated  
23 in my deposition. Maybe an estimate of 90  
24 percent.

25 Q. So approximately nine out of 10 of the

1       lawsuits Johnson Rodenburg files result in a  
2       default judgement. Is that fair?

3       A.       That's what I thought.

4       Q.       Of the approximately one out of 10  
5       lawsuits where there's a response, what percentage  
6       of those people appear through counsel,  
7       approximately?

8       A.       I don't know. Maybe half.

9       Q.       What's the average amount that Johnson  
10      Rodenburg sues someone for?

11      A.       The average amount?

12      Q.       What's the range?

13      A.       You mean the balance? There is no set --  
14      you mean like a dollar amount?

15      Q.       Correct.

16      A.       We don't have one.

17      Q.       What is the most amount of money that  
18      Johnson Rodenburg would sue someone for?

19      A.       The most?

20      Q.       That you can recollect.

21      A.       I've seen credit card bills as high as  
22      \$50,000 on American Express.

23      Q.       How about, what is the least amount?

24      A.       Sometimes I've seen them for \$50 on  
25      accounts where they are smaller clients, smaller

1 creditors.

2 Q. Johnson Rodenburg has filed some lawsuits  
3 asking for \$50,000, some for \$50 on behalf of its  
4 client?

5 A. Yes.

6 Q. If you had to give me an average, what  
7 would it be?

8 A. An average?

9 Q. Correct.

10 A. I have no idea. I'm sorry.

11 Q. That's okay. Bear with me just a second.  
12 I had occasion to look at Johnson, Rodenburg &  
13 Lauinger's filings just here in Yellowstone County  
14 last week and it looked like there were six  
15 filings, and five of those six were over \$10,000.

16 MR. BOHYER: I object to this.  
17 Counsel is testifying --

18 THE COURT: Sustained.

19 BY MR. HEENAN:

20 Q. Can you give me a ballpark what is the  
21 average amount?

22 MR. BOHYER: Objection. Asked  
23 and answered.

24 THE COURT: Sustained.

25

1 BY MR. HEENAN:

2 Q. Mr. McCullough was sued for approximately  
3 \$9,000, including interest?

4 A. I think that's about right.

5 Q. How many -- well, strike that.

6 I want to show you what has been  
7 marked but not admitted as Exhibit 106.

8 MR. HEENAN: Would you pull that  
9 up on the screen?

10 BY MR. HEENAN:

11 Q. Is it on your screen, ma'am?

12 A. Yes.

13 Q. Are you familiar with this document that's  
14 been marked as Exhibit 106?

15 A. Somewhat.

16 Q. You're aware that through the course of  
17 this litigation Mr. McCullough asked Johnson,  
18 Rodenburg & Lauinger to disclose how many lawsuits  
19 it's filed in the state of Montana from January of  
20 2007 through approximately July of 2008?

21 A. Yes.

22 MR. HEENAN: At this time, Your  
23 Honor, I move for the admission of Exhibit 106.

24 THE COURT: Any objection?

25 MR. BOHYER: Yes, relevance and

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1 Rule 403.

2 THE COURT: The testimony, as I  
3 understand it, is that this is a list of cases  
4 filed by Johnson, Rodenburg & Lauinger in Montana  
5 from what date? January of '07 through --

6 MR. HEENAN: Can you bring up  
7 page two, please?

8 THE COURT: What date, Counsel?

9 MR. HEENAN: July 19 of 2008,  
10 Your Honor.

11 THE COURT: I will overrule the  
12 objection except for the first three pages. I  
13 don't know that the pleading needs to be  
14 submitted, but the document itself, I think  
15 there's testimony as to what that is. So I will  
16 admit Document 106 beginning with 106-4.

17 MR. HEENAN: Thank you, Your  
18 Honor.

19 (Exhibit 106, beginning with  
20 106-4, is admitted into evidence.)

21 Put it on page four, please. And  
22 I would like to publish for the jury, please,  
23 that exhibit. Next page, please.

24 MR. BOHYER: Your Honor, this  
25 one -- never mind. I withdraw the objection.

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1 MR. HEENAN: Next page, please.

2 Next page, please.

3 THE COURT: Now wait. We are not  
4 going to go through every one, are we?

5 MR. HEENAN: Let's jump to the  
6 end.

7 BY MR. HEENAN:

8 Q. At the top here, Ms. Lauinger, that number  
9 here. You agree that the document, this list of  
10 lawsuits that Johnson Rodenburg's filed in this  
11 18-month time frame, is 143 pages long?

12 A. I don't know how many pages it is. It's  
13 showing the Clerk of Court on my screen, Clerk of  
14 Justice Court.

15 Q. I don't want to go through every page. Do  
16 we need to do it?

17 A. No, but I mean, it shows 147; 106 to 147  
18 up at the top. I don't know what that is.

19 Q. Do you have an awareness of the total  
20 number of lawsuits that Johnson Rodenburg has  
21 filed in the state of Montana over that  
22 year-and-a-half time period?

23 A. I believe you said it was 2700.

24 MR. HEENAN: No further  
25 questions. Thank you.

1 THE COURT: Does the defendant  
2 wish to examine at this time?

3 MR. BOHYER: Not at this time.  
4 We will reserve for our case.

5 THE COURT: You may step down.

6 MR. HEENAN: Plaintiff will rest,  
7 Your Honor.

8 THE COURT: Ladies and gentlemen,  
9 the plaintiff, by Mr. Heenan, rests. What that  
10 means is the plaintiff has now presented to you  
11 the evidence that the plaintiff wishes you to  
12 consider in his case. So now it will be the  
13 defendant's turn to present evidence to you.

14 So now is a good time to take a  
15 break, so we will be in recess for about 15  
16 minutes.

17 I will see counsel in chambers.  
18 (The following discussion takes  
19 place in chambers:)

20 THE COURT: Before the defense  
21 makes its motions, I want to state that  
22 sometimes, when we try to be efficient by  
23 pre-admitting exhibits, a question comes up if an  
24 exhibit was pre-admitted but then never referred  
25 to at the trial.

1                   And so I wanted to propose this  
2     to counsel and give them an opportunity to  
3     respond, that if a document is not referenced at  
4     any time during the trial, even if it was  
5     pre-admitted, I'm going to assume it was in fact  
6     withdrawn and it will not be submitted to the  
7     jury.

8                   Is that satisfactory with the  
9     plaintiff?

10                  MR. HEENAN: Yes, but in light of  
11     the fact that I just rested, I would like an  
12     opportunity to tick through my exhibit list and  
13     make sure there's nothing that I need to cover.

14                  THE COURT: That's why I wanted  
15     to give you an opportunity. Let me know before  
16     the defendant rests. I don't want to surprise  
17     you with this, but I don't want it to come up at  
18     the end when we are sending exhibits to the jury  
19     either.

20                  MR. SIMPSON: One question. Does  
21     that include exhibits that were referenced in the  
22     opening? Or do we need to have actually asked  
23     questions of a witness with --

24                  THE COURT: They were admitted  
25     and I told you you can use them. So I think if

1       they were referenced, I think they are properly  
2       submitted, but I think the better practice is to  
3       have a witness identify them or to otherwise get  
4       them presented to the jury. Otherwise the jury  
5       has no frame of reference for them.

6                       I assume, when someone puts an  
7       exhibit on their exhibit list and says, We intend  
8       to offer this exhibit at trial, they are going to  
9       use it in some way at trial. It becomes a  
10      question when they don't.

11                    THE CLERK: The ones in the  
12      opening statements will go to the jury even if  
13      they are not talked about?

14                    THE COURT: So far I think they  
15      all have been. Do you recall any that have not  
16      been?

17                    MR. SIMPSON: Not off the top of  
18      my head. Do you mind if I get my notebook?

19                    THE COURT: Sure.

20                    (Discussion off the record.)

21                    THE COURT: The defense indicated  
22      earlier that after plaintiff rested the defendant  
23      wished to make some motions. You may do so at  
24      this time.

25                    MR. BOHYER: We would move for a

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1 directed verdict on the abuse of process and  
2 malicious prosecution claims because there is no  
3 evidence in the record of malice at this point.  
4 At most, there is evidence of an error. There's  
5 been no evidence that any of the partners in the  
6 partnership had specific knowledge of the statute  
7 of limitations prior to the time that the suit  
8 was filed.

9 In addition, and with respect to  
10 the abuse of process claim, there is no evidence  
11 of ulterior motive that's been offered. Indeed I  
12 asked Mr. Patten if he saw in the file and he  
13 said he did not.

14 And as I raised, and I don't  
15 remember now if it was at the motions hearing or  
16 in the final pretrial conference, there must be a  
17 legal distinction between an abuse of process and  
18 malicious prosecution. And that legal  
19 distinction, as I read it, is the ulterior  
20 motive. If there is no ulterior motive beyond  
21 the lawsuit itself, then the abuse of process  
22 claim has to be dismissed.

23 And to the extent that the Seipel  
24 (ph) case from the Montana Supreme Court seems to  
25 suggest otherwise, I would assert that that case

1 has to be limited to its facts, because Seipel  
2 was decided about a week -- and I might be  
3 wrong -- two weeks after the *Judd v. BNSF* case,  
4 and Seipel does not overrule *BNSF v. Judd*, nor  
5 does it overrule the principles set forth in  
6 *Seltzer v. Morton*.

7 THE COURT: Those motions are  
8 denied.

9 MR. BOHYER: We would also move  
10 for a directed verdict on plaintiff's emotional  
11 distress claim as there has been no evidence of  
12 severe emotional distress that was caused by the  
13 conduct of our client.

14 Plaintiff admitted on his  
15 testimony that he had received no medical  
16 treatment as a result of the suit. He testified  
17 that he has had four days since this alleged head  
18 injury in 1990 when he has not had headaches or  
19 pain, and that's also set forth on his calendar.  
20 There has been no evidence that he has suffered  
21 any sort of stress that's beyond the ordinary  
22 stress that folks have when they have financial  
23 issues.

24 THE COURT: That motion is denied  
25 as well.

1 MR. BOHYER: We would also move  
2 for a directed verdict on punitive damages, since  
3 there is no evidence of malice at this point.  
4 There is nexus only.

5 THE COURT: That motion is  
6 denied.

7 MR. BOHYER: We move for a  
8 directed verdict on any attorneys' fees and  
9 costs, as there has been no evidence offered in  
10 this case of any incurred fees or costs.

11 THE COURT: What about that, Mr.  
12 Heenan?

13 MR. HEENAN: That's correct, Your  
14 Honor.

15 THE COURT: I will grant that  
16 motion.

17 MR. SIMPSON: One other motion we  
18 would like to make is for a directed verdict on  
19 the claim under the Fair Trade Practices Act and  
20 Consumer Protection Act.

21 Again, Mr. McCullough hasn't  
22 demonstrated that he is a consumer or was in any  
23 kind of a relationship with our client that would  
24 cover such that our client's conduct would be  
25 covered under the Act. We don't believe he is



1       entitled to relief under the Act, and I don't  
2       recall the exact discussion we had at the  
3       pretrial conference, so I will leave it at that.  
4       I'm sorry.

5                       THE COURT:   Do you wish to be  
6       heard on that?

7                       MR. HEENAN:   Briefly, Your Honor.  
8       I think in terms of time, I think I need to wait  
9       until the defendant puts on their case, but I do  
10      intend to ask for directed verdict with respect  
11      to liability under the Consumer Protection Act,  
12      in light of the Court's order finding Johnson  
13      Rodenburg's practice with respect to their  
14      requests for admission abusive, unfair and  
15      unconscionable, as well as the Court's rulings  
16      that the Consumer Protection Act applies to the  
17      collection of debt.

18                      We have presented evidence this  
19      was a debt-collection case, that Johnson  
20      Rodenburg's conduct is subject to the Act, and  
21      the Consumer Protection Act itself provides the  
22      Courts should be liberally construed and should  
23      be considered in light of federal statutes and  
24      regulations. I think this Court can take its  
25      previous ruling under the FDCPA and, if it's so

1 inclined, hold the same unfair and deceptive  
2 conduct which the Court found under the FDCPA is  
3 also applicable under the Consumer Protection  
4 Act.

5 THE COURT: I will take that as  
6 an argument in opposition to the motion for  
7 directed verdict under the Unfair Trade Practices  
8 Act. I would deny that. To the extent you're  
9 making a separate motion, you need to renew that  
10 at the close of all evidence.

11 MR. HEENAN: I will do so.

12 THE COURT: With respect to the  
13 emotional distress claim, I have one additional  
14 question, Mr. Heenan. I don't recall any  
15 specific testimony about future emotional  
16 distress.

17 Is it the plaintiff's position or  
18 is the plaintiff here claiming future emotional  
19 distress? Or are we talking only about past  
20 emotional distress?

21 MR. HEENAN: I think, to be fair,  
22 Your Honor, the stress went away when he got a  
23 lawyer. So yeah, I would agree with the Court on  
24 that regard.

25 THE COURT: Then I'm going to,

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1 with respect to the directed verdict, it wasn't  
2 specifically made as distinguishing past and  
3 future. But I think, when we -- and I will deny  
4 that motion, but when we instruct, I think we  
5 will only be able to instruct, then, based on  
6 what you said on past, not on future. Okay?

7 MR. HEENAN: That's fair.

8 MR. BOHYER: With counsel's  
9 reference there and the acknowledgement as to the  
10 damage, I would ask for a directed verdict on any  
11 future damages in general. And if that's the  
12 acknowledgement, maybe you're going to deal with  
13 it via instruction, but I want to get it on the  
14 record as a motion for directed verdict.

15 THE COURT: I'm not going to  
16 direct a verdict on it. It's a question of what  
17 issues we submit to the jury. Anything else?

18 MR. HEENAN: No.

19 THE COURT: I will give you some  
20 time here.

21 (Brief recess.)

22 THE COURT: Court is now in  
23 session. The defendant may call his first  
24 witness.

25 MR. SIMPSON: The defendant calls

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1 Charles Dendy.

2 THE COURT: Please come forward  
3 and be sworn, Mr. Dendy.

4 CHARLES DENDY, having been duly sworn, was  
5 examined and testified as follows:

6 THE CLERK: Have a seat, please,  
7 and state your full name and spell it.

8 THE WITNESS: My name is Charles  
9 Dendy. D-e-n-d-y.

10 DIRECT EXAMINATION

11 BY MR. SIMPSON:

12 Q. And your business address?

13 A. 1004 East Central Avenue, Bismarck, North  
14 Dakota, 58501.

15 Q. Charlie, are you married?

16 A. Yes, I am.

17 Q. How long have you been married?

18 A. I don't recall at the moment. And I lost  
19 my wedding ring last week.

20 Q. Do you have any kids?

21 A. Yes, I have three children.

22 Q. How old are they?

23 A. They are five, three and about six months.

24 Q. Getting a lot of sleep these days?

25 A. Not too much, no.

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1 Q. Tell the jury what your occupation is.

2 A. I'm an attorney at the law firm of  
3 Johnson, Rodenburg & Lauinger.

4 Q. Where were you born and raised?

5 A. I was born in Shreveport, Louisiana and my  
6 parents were in the air force. I moved around a  
7 lot, lived in Texas, Nebraska and eventually wound  
8 up in Grand Forks, North Dakota.

9 Q. When did you end up there?

10 A. About 1989 or so.

11 Q. Did you go to high school there?

12 A. Yes, I went to high school at Grand Forks.

13 Q. Did you finish high school there?

14 A. Yes.

15 Q. What year?

16 A. That was '94.

17 Q. I take it you went to college, obviously.

18 A. Yes, I went to UNDA Grand Forks.

19 Q. What degree did you study?

20 A. Bachelor of Science in criminal justice  
21 studies.

22 Q. I assume you graduated.

23 A. Yes, I did.

24 Q. What year did you finish?

25 A. That was '99.

1 Q. What did you do after you finished your  
2 degree in criminal justice?

3 A. After I finished that I went straight into  
4 law school at UNDA Grand Forks.

5 Q. What made you want to go to law school?

6 A. Well, originally I was a pre-med major in  
7 undergrad and I took a criminal justice class and  
8 found that I really liked the law. And at that  
9 point I just decided to switch to criminal justice  
10 and go to law school.

11 Q. Did you have an area that you focused on  
12 in law school?

13 A. No, not really. It was just a general  
14 education.

15 Q. What year did you finish your law degree?

16 A. That was in 2002.

17 Q. I take it you took a Bar exam after you  
18 finished.

19 A. Yes, I took the Bar in North Dakota in  
20 2002.

21 Q. If you would, tell the jury what a Bar  
22 exam is.

23 A. A Bar exam is a nationally graded exam for  
24 attorneys that tests a wide range of legal  
25 knowledge about different subjects, different

1 areas, Rules of Civil Procedure.

2 Q. Did you pass the Bar?

3 A. Yes, I did.

4 Q. Did you later take a Bar exam in Montana?

5 A. Yes, I took one in Montana in 2006.

6 Q. If you had taken one in North Dakota, why  
7 did you have to take one here?

8 A. Montana, to become admitted as an attorney  
9 here, they require you to take the Bar exam in  
10 Montana. So I retook it in Montana.

11 Q. Aside from taking Bar examinations, what  
12 did you do after you finished law school?

13 A. Immediately after law school, I clerked  
14 for a little over two years with a federal  
15 magistrate in Bismarck, North Dakota.

16 Q. Is that kind of a magistrate judge like  
17 Judge Ostby here?

18 A. Yes, it would.

19 Q. How long did you serve as a law clerk?

20 A. That was a little over two years.

21 Q. Tell the jury, if you would, what does a  
22 law clerk do?

23 A. A law clerk helps the judge with preparing  
24 responses, arranging hearings, preparing  
25 courtrooms; pretty much helps the judge with

1       whatever they need done.

2       Q.       Do you write legal memorandums for the  
3       Court?

4       A.       Yes.

5       Q.       Did you help provide input for the judge,  
6       doing research and advising the judge on various  
7       motions and disputes before the Court?

8       A.       Yes, I did.

9       Q.       Did you ever have a chance to sit in and  
10      watch trials like this one?

11      A.       Not really. The magistrate I worked for  
12      was ill for part of his term and we didn't have as  
13      many trials.

14      Q.       What was the name of the judge you worked  
15      for?

16      A.       It was Magistrate Dwight Cozman (ph).

17      Q.       When your clerkship with Judge Cozman  
18      finished up, what did you do following that time?

19      A.       When my clerkship ended, I started with  
20      the Johnson, Rodenburg & Lauinger firm, and that's  
21      where I've been ever since.

22      Q.       What year did you start with Johnson,  
23      Rodenburg & Lauinger?

24      A.       That would have been 2004.

25      Q.       I want to make sure we have got this



1 correct. You took the Bar exam in Montana and  
2 North Dakota. You passed both those Bars?

3 A. That's correct.

4 Q. Does that mean you're licensed to practice  
5 law in both states?

6 A. Yes.

7 Q. Any other states where you're licensed to  
8 practice law?

9 A. No, just those two.

10 Q. What are your job duties as an attorney at  
11 Johnson, Rodenburg & Lauinger?

12 A. At present, I'm handling the cases in  
13 Montana. So as the attorney, I handle the firm's  
14 collection cases for Montana for the Bismarck  
15 office.

16 Q. And I think the jury's heard something  
17 about this already, but what is the specialization  
18 or the emphasis of your firm? What kind of law do  
19 you practice?

20 A. We do, in our Bismarck office, we do  
21 solely collection work.

22 Q. You protect the rights of creditors?

23 A. Yes, we represent creditors.

24 Q. I understand there are a number of other  
25 people employed at your office who aren't

1 attorneys but they assist you and Lisa in doing  
2 various job duties. Is that right?

3 A. That's correct.

4 Q. Tell me about what kinds of staff people  
5 you have at the office and what kinds of things  
6 they do.

7 A. We have quite a few staff people. Some of  
8 them are responsible for opening mail, processing  
9 outgoing mail. Others are responsible for  
10 communicating with debt collectors on accounts, to  
11 set up payment plans or things of that nature. On  
12 the legal end, others will draft pleadings for  
13 myself and Lisa to review and assist us with that.  
14 Then we also have personnel that processes  
15 payments, that kind of thing.

16 Q. The folks that draft pleadings, court  
17 documents, essentially for you and Lisa, if  
18 somebody does that and hands you a Complaint and  
19 says, Here you go, Charles, do you just sign it  
20 and put it in the mail? What do you do before you  
21 take action on it?

22 A. The legal pleadings that we use, first of  
23 all, they are created by the attorneys and  
24 approved by us. We do have secretarial people who  
25 will help us fill in the information from the

1 files and get them printed off and give them to us  
2 to review. At that point we get the documents,  
3 and, as the attorney that is handling the file,  
4 it's our job to look through the documents and  
5 make sure the information is correct, all the  
6 pieces are there that need to be there and they  
7 are ready to go out before we sign them.

8 Q. Whose responsibility is it when a document  
9 goes out for what's in the document?

10 A. The attorney on the file.

11 Q. It's not the staff person?

12 A. Correct.

13 Q. Do you recall when you first became  
14 involved representing CACV in its claim against  
15 Mr. McCullough? Just generally the time frame.

16 A. I believe that would have been sometime in  
17 2007.

18 Q. Do you remember beginning of the year,  
19 midyear?

20 A. Probably closer to the beginning of the  
21 year.

22 Q. What was the nature of your involvement in  
23 that case? What were you going to do on that  
24 file?

25 A. It was placed with our office for

1 collections and for litigation.

2 Q. Who was the attorney primarily responsible  
3 when you got involved for representing CACV on its  
4 claim against Mr. McCullough?

5 A. I was the attorney handling that file.

6 Q. So what was the first thing you recall  
7 doing when you got the file?

8 A. The first thing I recall doing on the file  
9 is preparing a letter to send out with validation.

10 Q. Why do you do that?

11 A. There's the federal Fair Trade Practices  
12 Act, and that act requires us to send a letter to  
13 a debtor notifying them of certain rights to  
14 dispute debts, and if they do dispute those debts,  
15 then we send out validation of the debt, some  
16 information to them to let them know what the debt  
17 is that we are saying is owed and who the creditor  
18 is, information of that nature.

19 MR. SIMPSON: Judge --

20 BY MR. SIMPSON:

21 Q. Do you have that letter in front of you?

22 A. Yes, I do.

23 MR. SIMPSON: The screens are on?

24 THE COURT: Mm-hmm.

25 BY MR. SIMPSON:

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1 Q. It's Exhibit 504. Is that the letter you  
2 were talking about?

3 A. No, this is the initial demand -- yes,  
4 this is the initial demand letter I was speaking  
5 of that notifies the debtor of their rights to  
6 dispute.

7 Q. You're familiar with this letter?

8 A. Yes.

9 Q. When did you first see this letter?

10 A. I would have first seen the letter, I  
11 believe, when the suit documents came to me for  
12 review.

13 Q. And do you know if you saw it, then,  
14 shortly after it went out or before it was sent?

15 A. I wouldn't have seen this letter until  
16 after it had already gone out.

17 Q. So you get the documents for review. Go  
18 ahead and tell the jury what it is you're going to  
19 do. You're going to draft a Complaint. Is that  
20 right?

21 A. That's correct.

22 Q. What do you do before you get the  
23 Complaint filed?

24 A. Well, the Complaint's drafted by one of  
25 the paralegals in the office. So then it comes to

1 me as a draft of the complaint.

2 At that point I go through our  
3 firm's file, and one of the things I do is make  
4 sure this demand letter has gone out to the  
5 defendant and they have had their chance to  
6 dispute the debt and that the letter wasn't  
7 returned as undeliverable or didn't go through for  
8 some reason I can see.

9 After that, I start looking at the  
10 Complaint itself and checking all the information  
11 in the Complaint, that we have the right plaintiff  
12 name, defendant name, court caption is right,  
13 right pages are there, the summons, the Complaint  
14 cover letter. Then I look at the actual  
15 allegations in the Complaint, start checking  
16 those, make sure the account number's right, the  
17 balance information is right, the name of the  
18 original creditor is right.

19 While I'm doing this, I'm looking  
20 at the file to make sure there wasn't any letter  
21 sent in response to this initial demand letter  
22 asking for validation that hasn't been responded  
23 to.

24 Q. Let me stop you there. Was there in fact  
25 any letter in your file disputing this debt?

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1       A.           There was at some point. I believe it was  
2       there before the Complaint went out.

3       Q.           No, no. Was there a letter from Mr.  
4       McCullough disputing the debt?

5       A.           Oh, no.

6       Q.           I'm sorry to interrupt. You were walking  
7       us through what you do before you file a  
8       Complaint.

9       A.           Certainly. I was saying, one of the  
10      things I'm looking for before I send a Complaint  
11      out is to see that there wasn't a dispute prior to  
12      the Complaint and that there wasn't a bankruptcy  
13      filed, something of that nature, that would  
14      prevent us from going forward with the suit. I  
15      also look to see that the suit, when it reaches  
16      the Court, is going to be filed with the Court  
17      before the statute of limitations on the debt  
18      expires. So I check that information in our files  
19      as well.

20      Q.           Now, obviously the statute of limitations  
21      is one of the big issues in this case. You're  
22      aware of that.

23                   What did you do to make sure you  
24      were going to comply with the statute of  
25      limitations in this case?

1       A.           In this case I would have looked at the  
2       electronic information that was sent to us from  
3       the client and look to see what the date of last  
4       payment was. And I know the statute of  
5       limitations is five years. So I would make sure  
6       that the suit was filed within five years of that  
7       last payment date.

8       Q.           What is the big deal about the statute of  
9       limitations?

10      A.           The statute of limitations is a rule that  
11      says that after a certain number of years you  
12      can't file a certain type of action. So  
13      basically, if you want to proceed with a legal  
14      action, you need to do so before that time period  
15      runs up.

16      Q.           Did you satisfy yourself that this  
17      Complaint was going to be compliant with the  
18      statute of limitations?

19      A.           Yes, I did.

20      Q.           Do you recall as you sit here what  
21      information you were aware of in your file that  
22      reflected the last payment date?

23      A.           I would have looked at the field in our  
24      collection system that shows what the date of last  
25      payment was, and we also have another place where



1 we show our calculation of the statute of  
2 limitations based on that. So I looked at those  
3 two.

4 Q. Was there any question in your mind that  
5 the date of the last payment was within five years  
6 of the date that you were going to file this  
7 Complaint?

8 A. No. And on this particular file, there's  
9 also been some correspondence back and forth by  
10 e-mail early on to confirm what the date of last  
11 payment was.

12 Q. Did you have a chance to review that  
13 correspondence?

14 A. Yes, I would have reviewed that before I  
15 sent the Complaint as well.

16 Q. Tell the jury, if you would, why did you  
17 file the complaint against Mr. McCullough? What  
18 was your purposes in doing so?

19 A. I filed the Complaint because our client  
20 placed a claim with us against Mr. McCullough for  
21 this amount.

22 And when I reviewed the file at  
23 the time the summons Complaint was drafted, it was  
24 my belief the file was within the statute of  
25 limitations and there was no reason not to file

1 it.

2 Q. Did you have any question about whether  
3 this was a valid credit card debt?

4 A. No.

5 Q. Any other reason other than representing  
6 your client that you would attempt to sue him in  
7 this matter?

8 A. No.

9 Q. After the Complaint was filed, what was  
10 your next step in the process?

11 A. After the Complaint was filed, I believe  
12 we received a letter next from a law firm, and it  
13 was a little odd, but they indicated they didn't  
14 actually represent Mr. McCullough but they were  
15 asking that validation be provided.

16 Q. Was that within 30 days of the letter you  
17 sent out?

18 A. No, it wasn't.

19 Q. Let's jump ahead. Did you at some point  
20 send out a letter to Mr. McCullough providing  
21 information to validate the debt?

22 A. Yes.

23 MR. SIMPSON: Exhibit 508. This  
24 has not been admitted yet, Your Honor.

25 THE COURT: Okay.

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1 MR. HEENAN: No objection, Your  
2 Honor.

3 BY MR. SIMPSON:

4 Q. Is this a true and correct copy of the  
5 letter sent to Mr. McCullough?

6 A. Yes, it is. It would have had a handful  
7 of documents attached to it as well.

8 Q. Does this appear to be the letter in the  
9 packet of documents that you had sent to Mr.  
10 McCullough?

11 A. Yes, it does.

12 MR. SIMPSON: I believe Mr.  
13 Heenan already said he didn't object, but for the  
14 record, I move for the admission of Defendant's  
15 Exhibit 508.

16 MR. HEENAN: No objection.

17 THE COURT: Exhibit 508 is  
18 admitted without objection.

19 (Exhibit 508 is admitted into  
20 evidence.)

21 BY MR. SIMPSON:

22 Q. What was the purpose of sending this  
23 letter and attachments to Mr. McCullough?

24 A. This is a letter, and, as I indicated, I  
25 got this letter from a law firm asking for

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1 validation after the summons Complaints were sent  
2 out. And even though it wasn't requested within  
3 30 days as it should have been, the validation, I  
4 decided I wanted to go ahead and send the  
5 validation, just to be safe. I didn't want to  
6 take a chance of violating the FDCPA.

7 Q. Now, what is shown here on page two of  
8 Exhibit 508?

9 MR. SIMPSON: And maybe if you  
10 could kind of draw out the upper two-thirds of  
11 that.

12 THE WITNESS: That's a copy of a  
13 credit card statement that was addressed to M.  
14 Tim McCullough and Doraleen McCullough.

15 BY MR. SIMPSON:

16 Q. Does it reference any payment information  
17 on it?

18 A. It does. It references a payment of looks  
19 like \$44.52.

20 Q. On what date?

21 A. August 21 of 2000.

22 Q. Now, did you take a look at that document  
23 before you sent it on to Mr. McCullough?

24 A. Yes, I'm sure I did.

25 Q. Now, that doesn't square with June 30,

1       2004.   What is going on here?

2       A.       The last payment date that we had in our  
3       file was a date that was provided by the client,  
4       and it was a payment that they said was made to  
5       them, not to the original creditor.

6       Q.       Would you expect to see a statement, a  
7       credit card statement, from them, from CACV?

8       A.       No.   Usually the credit card statements on  
9       a file will stop when the original creditor stops  
10      handling the account, when it's sold.  After that  
11      point you won't see the same kind of credit card  
12      statement.

13      Q.       So, in your mind, did this cause you any  
14      concern that you were looking at a payment of  
15      August of 2000 rather than June of 2004?

16      A.       No.

17                      MR. SIMPSON:  If you would, would  
18      you turn to page four in Exhibit 508, please.

19      BY MR. SIMPSON:

20      Q.       I'm not going to go through each of the  
21      pages.  They are almost illegible.

22                      Can you tell by looking at the bad  
23      photocopy what this is?

24      A.       It's a copy of the credit card agreement.

25      Q.       We have also heard the term card member

1 agreement. Is that what this is?

2 A. Yes.

3 Q. The pages following are the same thing?

4 A. Yes.

5 Q. Did you take a look at the card member  
6 agreement before it was sent out?

7 A. Yes, I believe I would have.

8 Q. Have you seen ones like this on occasions?

9 A. Yes, I've seen a lot.

10 Q. Any estimate of how many card member  
11 agreements you've seen?

12 A. I think I've seen hundreds of card member  
13 agreements.

14 Q. Have you ever seen one that doesn't  
15 contain a clause that says the credit card company  
16 gets to asks for attorneys' fees or gets to  
17 recover attorneys' fees if the credit card user  
18 doesn't pay the bill?

19 A. No, I haven't.

20 Q. So let's go back to where we were in the  
21 process before I got us sidetracked with this  
22 letter and these documents.

23 You've sent out the Complaint.

24 It's gotten filed. Is that correct?

25 A. That's correct.

1 Q. April of 2007. Does that square with your  
2 recollection?

3 A. I don't recall the date, but that sounds  
4 about right.

5 Q. Did you proceed to have the lawsuit served  
6 on Mr. McCullough?

7 A. Yes.

8 Q. What did you do to effect service of a  
9 lawsuit?

10 A. Usually we take the summons, original  
11 summons, and send it, along with a copy of the  
12 summons and a copy of the Complaint, either to the  
13 local sheriff or to a process server. And they  
14 take it out and personally serve it upon the  
15 defendant, hand the copies to them.

16 Q. That is a process that is authorized by  
17 the Rules of Civil Procedure?

18 A. Yes, it is.

19 Q. Did anything happen that you can recall --  
20 first of all, do you remember when you had it  
21 served on Mr. McCullough?

22 A. No, I don't.

23 Q. If I represent to you that the file shows  
24 it was, I think Mr. McCullough testified, June of  
25 2007, does that sound about right?

1       A.           That sounds about right.

2       Q.           Do you recall anything happening at your  
3       office on this file around June or July of 2007?  
4       Any events, any action occurring on this file?

5       A.           I guess I'm not exactly sure when  
6       you're --

7       Q.           Did you file anything, did you have any  
8       discussions with Mr. McCullough, anything occur on  
9       the file?

10      A.           I need to see our paperless notes, I  
11      guess.

12                   MR. SIMPSON: Let's bring up  
13      Exhibit 7. This is Exhibit 7 and we are on page  
14      four.

15      BY MR. SIMPSON:

16      Q.           Is that what you are referring to?

17      A.           Yes, this is the notes we keep in our  
18      record. It's notes of what we have done and what  
19      is going on with the file.

20      Q.           Does that help to refresh your  
21      recollection as to what if anything was occurring  
22      in the June-July time frame of 2007?

23      A.           Yes, it does. That was -- June was around  
24      the time it was served. And after it was served,  
25      there was an answer that was served upon us to



1 file.

2 Q. Did you look at the answer?

3 A. Yes, I did.

4 Q. Did it raise any questions in your mind,  
5 Mr. McCullough has a statute of limitations? Why  
6 didn't you do anything about it at that time?

7 A. I would have reviewed the last payment  
8 information in our file and seen that the last  
9 payment would have put us within the statute of  
10 limitations and the statute of limitations is not  
11 an uncommon defense and, more often than not, it's  
12 not a valid defense to a case.

13 Q. Do you have a recollection of receiving  
14 any phone calls from Mr. McCullough after he filed  
15 his answer?

16 A. No, I don't.

17 Q. Do you have any recollection of receiving  
18 any voice mails from him?

19 A. No, I don't.

20 Q. If a person that you sue who is pro se or  
21 a person that is representing himself or herself  
22 calls you, do you have a practice one way or the  
23 other whether you call them back?

24 A. I call anybody back that calls me.

25 Q. As to Mr. McCullough, it's your testimony

1       that you don't recall getting any calls from him?

2       A.       No, I don't.

3       Q.       Would they be documented in the file?

4       A.       Yes. If we got a call, there would be a  
5       note in the file there.

6       Q.       Do you see any notes in the file about --  
7       well, looks like, let's take a look here. Next  
8       page, looks like he called on July 12. Is that  
9       right?

10      A.       Oh, yes, he did.

11      Q.       Did he leave a number to call him back?

12      A.       No, he didn't.

13      Q.       And I wanted to ask you about this because  
14      I think it's an important point. Was there a  
15      scheduling conference set by the judge in the case  
16      that you sued him on?

17      A.       Yes, there was.

18      Q.       And tell the jury what a scheduling  
19      conference is.

20      A.       A scheduling conference is something a  
21      court usually sets up after an answer comes in.  
22      It's a chance for the parties to get together and  
23      pick deadlines for the rest of the case.  
24      Different courts do them different ways.  
25      Sometimes you set a trial date. Sometimes you

1 don't set one at that time, but it's typically a  
2 chance for the parties to get together and create  
3 a road map for how the case is going to proceed.

4 Q. Now, what is the procedure? Do you show  
5 up in court? Do you attend by phone? How do they  
6 usually work?

7 A. It's different in every court. Most of  
8 the time it's by phone. And this particular  
9 court, in this case, wanted to do it by phone  
10 conference, with both parties being there by  
11 phone.

12 Q. Did you make any efforts to try to set  
13 that up?

14 A. Yes, I did.

15 Q. What did you do?

16 A. Usually a phone number is provided on an  
17 answer, when an answer is filed. In this case  
18 there wasn't a phone number provided. We had a  
19 number in our file, so I tried calling that number  
20 and it was disconnected and I couldn't reach  
21 anybody there.

22 Q. Could you find any number for Mr.  
23 McCullough?

24 A. No, I couldn't.

25 Q. According to your note, he didn't leave a

1 number when he called?

2 A. That's correct.

3 Q. So what is the next step in your lawsuit?

4 You've got the Complaint filed. He filed an  
5 answer. At some point, did you have a scheduling  
6 conference?

7 A. Yes. The Court went ahead with a  
8 scheduling conference that day. It was set.

9 Q. I take it Mr. McCullough wasn't there.

10 A. That's correct.

11 Q. Did the judge just enter a routine  
12 scheduling order?

13 A. Yes, they did.

14 Q. Does the scheduling order set out a trial  
15 date?

16 A. In this county, I believe it would have,  
17 but I don't recall what the date was.

18 Q. So at some point you decided to send  
19 written discovery requests to Mr. McCullough. Is  
20 that right?

21 A. That's correct.

22 Q. What are written discovery requests?

23 A. Discovery is a process for the parties to  
24 exchange information so they can learn more about  
25 the other side's case.

1 Q. Is it something that is authorized by the  
2 Rules of Procedure?

3 A. Yes, they are provided for in the Rules of  
4 Procedure.

5 Q. Have you ever had, when you're  
6 representing a client, discovery requests sent to  
7 you?

8 A. Yes, I have.

9 Q. Do you ever have requests for admission  
10 sent to you?

11 A. Yes, I do.

12 Q. Why did you decide to send Mr. McCullough  
13 discovery requests?

14 A. It's an opportunity to find out more about  
15 his defenses. He asserted a couple of defenses in  
16 his answer, so I wanted to ask him questions about  
17 that, find out what information he had that might  
18 be relevant to those defenses.

19 Q. Now, we know those went out in October of  
20 2007. Does that square with your recollection?

21 A. Yes, it does.

22 Q. We know at that time that Grace in your  
23 office had had some e-mail exchanges with Bobby  
24 Dunker at CACV. Were you aware of that?

25 A. Not at the time, no.

1 Q. Just to set the scene, if you will, the  
2 nature of those e-mails, as I understand it, was  
3 that the payment by Mr. McCullough that people had  
4 thought had been a payment on the account in 2004  
5 was in fact a return of unused costs. Is that  
6 your understanding?

7 A. Yes, it is.

8 Q. Where was that information? Where was  
9 that e-mail?

10 A. That e-mail had been printed into the  
11 paperless file of the scanned image.

12 Q. When did you first read that e-mail?

13 A. The first time I recall reading that  
14 e-mail is after having a conversation with someone  
15 at Collect America later on in the case.

16 Q. Was it before you sent out the discovery  
17 requests to Mr. McCullough?

18 A. No, it would have been after that date.

19 Q. Did you have any inkling in your mind,  
20 when you sent discovery to Mr. McCullough,  
21 including the requests for admission, that maybe  
22 you had a problem with the statute of limitations?

23 A. No.

24 Q. Would you have sent those out if you did?

25 A. No, I wouldn't.

1 Q. Did Mr. McCullough or his attorney respond  
2 to those requests?

3 A. Yes, the responses came in. The responses  
4 are put together by both the attorney and the  
5 defendant. So both of them had a part in  
6 responding.

7 Q. Is that a copy, at least, of the first  
8 page of the responses?

9 A. Yes, it is.

10 Q. Now, there has been some testimony that,  
11 or supposition, by the plaintiff's expert that you  
12 sent these out in an effect to torpedo Mr.  
13 McCullough's chance at defending this case. Was  
14 that your purpose?

15 A. No, it wasn't. Discovery is a process.  
16 It's used in almost every case and it's a way of  
17 getting information from the other side, what  
18 their arguments are.

19 Q. Did you ever move for summary judgement,  
20 ask the Court to just enter judgement against Mr.  
21 McCullough based on the paper pleadings, the paper  
22 file?

23 A. No, I didn't.

24 Q. What did you do when you got his  
25 responses?

1       A.           I would have to see the paperless notes, I  
2       guess.

3                   MR. SIMPSON:   Let's bring those  
4       back up.

5       BY MR. SIMPSON:

6       Q.           Let's go to Exhibit 7.

7       A.           I think it's probably on the next page. I  
8       think we are probably seeing the responses coming  
9       in there, November 30, but I'm not certain without  
10      being able to see the actual document scanned in  
11      there.

12      Q.           Let's take a look.   We are on Exhibit 7,  
13      page seven.   Is that what you have in front of  
14      you?

15      A.           Yes.

16      Q.           You made a note there on December 7, 2007,  
17      right?   Is that your entry?

18      A.           Yes, it is.

19      Q.           Are they your initials there, CD?

20      A.           Yes.

21      Q.           Obviously the jury can read the note.  
22      Tell us the context of how that note came to be  
23      written.

24      A.           Defense counsel had served requests for  
25      discovery upon us.   And for my client to respond



1 to those, I need to talk to them and they need to  
2 give me information and we need to get responses  
3 put together that we have to serve on defendant to  
4 answer their questions.

5 So in the process of obtaining  
6 that information, I was informed that what we  
7 thought was the date of last payment on the  
8 account wasn't a payment. So the account was  
9 actually past the statute of limitations.

10 Q. Did that cause you some concern?

11 A. Yes, it caused me a lot of concern.

12 Q. What did you do? Did she say, Go ahead  
13 and keep the suit going, or did she tell you to  
14 dismiss it?

15 A. No, the only option at that point was to  
16 dismiss the lawsuit.

17 Q. You're under oath. Can you tell the jury  
18 whether this was the first time you learned your  
19 suit was outside the statute of limitations?

20 A. Yes, it is.

21 Q. Did Leslie have any inkling, before that  
22 time, that you're aware of, did she ever express  
23 to you before this that she knew about this?

24 A. No.

25 Q. So you've had conversations with Leslie.

1 You know you have to dismiss it. What do you do  
2 about it at that point?

3 A. At that point, I talked to defense counsel  
4 to find out what his position was on dismissal  
5 with the lawsuit.

6 Q. That's Mr. Heenan?

7 A. Yes, it was.

8 Q. And did you in fact move to dismiss the  
9 lawsuit?

10 A. Yes, he indicated that the defendant  
11 didn't oppose dismissal of the lawsuit with  
12 prejudice. So I drafted an unopposed motion to  
13 dismiss the lawsuit with prejudice.

14 Q. Let's go through real quickly with you,  
15 not to belabor the point. This is Defendant's  
16 Exhibit 512. Do you recognize the document?

17 A. Yes. This is a copy of the e-mail  
18 response I got back from Mr. Heenan indicating his  
19 client didn't oppose dismissal with prejudice.

20 Q. Let's move on to Exhibit 513. Do you  
21 recognize Exhibit 513?

22 A. Yes.

23 Q. What is that?

24 A. That's a copy of the actual unopposed  
25 motion and notice of motion to dismiss that I

1 filed.

2 Q. And page two of that, please?

3 A. That's just the brief supporting the  
4 motion to dismiss. Yes, that's the brief.

5 Q. So I take it the lawsuit was dismissed at  
6 that point.

7 A. Yes, it was.

8 Q. Did you ever take any adverse action with  
9 respect to trying to execute on anything, take any  
10 of Mr. McCullough's assets, things of that nature?

11 A. No.

12 Q. Could you have without a judgement?

13 A. No.

14 Q. Were you ever sanctioned or punished by  
15 the Court in the collection case for filing the  
16 suit in the first place?

17 A. No.

18 Q. Were you ever punished or sanctioned by  
19 that Court for sending Mr. McCullough requests for  
20 admission?

21 A. No.

22 Q. Were you ever punished or sanctioned by  
23 that Court for seeking attorneys' fees in that  
24 case?

25 A. No.

1 Q. Do you think you did anything wrong when  
2 you filed the lawsuit in this case?

3 A. No, I don't.

4 Q. In hindsight, I bet you wish you hadn't  
5 filed it.

6 A. That's correct.

7 Q. Do you think you complied with the Rules  
8 of Civil Procedure at the time you filed it, based  
9 on what you knew at the time?

10 A. Yes, I do.

11 Q. Why is that?

12 A. The information that I was relying on for  
13 calculating the statute of limitations was  
14 provided by the client. And I talked about a  
15 payment to the client, not a payment to the  
16 original creditor. That's the type of information  
17 that I think I reasonably expect to be accurate  
18 when it comes from the client.

19 Q. Did you feel that you could rely on your  
20 client to provide you accurate information that it  
21 had in its file?

22 A. Certainly.

23 MR. SIMPSON: Charlie, I don't  
24 have any more questions for you.

25 THE COURT: You may

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1 cross-examine, Mr. Heenan.

2 MR. HEENAN: Thank you, Your  
3 Honor.

4 CROSS-EXAMINATION

5 BY MR. HEENAN:

6 Q. Good afternoon, Mr. Dendy.

7 A. Good afternoon.

8 Q. As I understand it, let me start with  
9 this. You're not a defendant in the lawsuit.  
10 True?

11 A. That's correct.

12 Q. The law firm that you work for is a  
13 defendant. They are the only defendant. True?

14 A. That's correct.

15 Q. The Johnson, Rodenburg & Lauinger law  
16 firm.

17 A. Right.

18 Q. And you're an employee of the Johnson,  
19 Rodenburg & Lauinger law firm?

20 A. That's correct.

21 Q. You said you don't think you did anything  
22 wrong. Do you think Johnson, Rodenburg & Lauinger  
23 did anything wrong with respect to its conduct  
24 towards Mr. McCullough?

25 A. No, I don't.

1 Q. As I understand it, your testimony is it's  
2 appropriate for you to rely on the representations  
3 that are made by the client, in this case CACV.

4 A. That's correct.

5 Q. You haven't been here, but I'll tell you  
6 that this jury has looked at a contract between  
7 Johnson Rodenburg and CACV, where CACV tells  
8 Johnson Rodenburg, Don't rely on the information  
9 we tell you. Do your own independent  
10 investigation.

11 Have you seen that document  
12 before, Mr. Dendy?

13 A. Yes, I have.

14 Q. Do you take your client at face value when  
15 they tell you not to rely on the information they  
16 bring you?

17 A. The history of dealings with the client is  
18 that they do provide that type of information to  
19 us.

20 Q. Provide what type of information?

21 A. Information about the account.

22 Q. Documents?

23 A. They provide documents, balance  
24 information.

25 Q. They provide you information on the

1 Collection Master screen. Correct?

2 A. And through e-mails.

3 Q. Not actual documents, true?

4 A. I don't understand.

5 Q. Not a credit card contract, not an account  
6 statement, not a cash check showing a date. They  
7 don't provide you those documents. Isn't that  
8 true?

9 A. They did provide those documents in this  
10 case.

11 Q. It's my understanding that Johnson  
12 Rodenburg didn't have any type of documentation in  
13 its file at the time it sued Mr. McCullough.

14 A. That's correct.

15 Q. And isn't it fair that that's not an  
16 isolated instance, that oftentimes Johnson  
17 Rodenburg will sue someone without any actual  
18 documentation from, in this case, CACV?

19 A. Sometimes. I don't know that it's that  
20 often.

21 Q. Sometimes?

22 A. Sometimes.

23 Q. Now, it's true, if Johnson, Rodenburg &  
24 Lauinger wanted to, it could obtain documentation  
25 or make efforts to obtain documentation prior to

1 suing people. Isn't that fair?

2 A. It's possible.

3 Q. But Johnson Rodenburg doesn't do that.

4 Isn't that true?

5 A. We didn't do it in this case.

6 Q. Do you do it sometimes?

7 A. Sometimes.

8 Q. Sometimes not?

9 A. Sometimes not.

10 Q. If Johnson, Rodenburg & Lauinger would  
11 have had all the documentation in the first  
12 instance, it never would have filed the  
13 time-barred lawsuit against Mr. McCullough. Isn't  
14 that true?

15 MR. SIMPSON: Objection. Calls  
16 for speculation and argumentative.

17 THE COURT: Overruled.

18 THE WITNESS: If we had the  
19 documentation that we eventually received on the  
20 file, we still would have filed the lawsuit  
21 because, as I indicated before, the information  
22 from the client was that a payment was made to  
23 it. And I wouldn't expect a payment to the  
24 client to show up on copies of statements from  
25 the original creditor.



1 BY MR. HEENAN:

2 Q. So the clients don't maintain any type of  
3 documentation with respect to when a payment is  
4 made?

5 A. Every client is different.

6 Q. How about this client?

7 A. They didn't provide anything.

8 Q. And that didn't bother you in prosecuting  
9 this lawsuit against Mr. McCullough. True?

10 A. True.

11 Q. A demand was made against Mr. McCullough  
12 for attorneys' fees. Correct?

13 A. That's correct.

14 Q. And there was no document in Johnson  
15 Rodenburg's file giving it a right to demand  
16 attorneys' fees against Mr. McCullough. Isn't  
17 that true?

18 A. We didn't have a copy of the card member  
19 agreement when the suit was filed.

20 Q. Is Mr. McCullough the only person that  
21 Johnson Rodenburg has sued in the state of  
22 Montana, and demanded attorneys' fees from,  
23 without having a contract in its file permitting  
24 attorneys' fees?

25 A. I don't know.

1 Q. Why not?

2 A. I can't think of another file.

3 Q. So is this the only time that Johnson,  
4 Rodenburg & Lauinger has ever sued someone and  
5 demanded attorneys' fees without having the  
6 contract in the file giving it a right to assert  
7 attorneys' fees?

8 A. Probably not.

9 Q. It's happened before?

10 A. Probably.

11 Q. Still happen?

12 A. No.

13 Q. Why not?

14 MR. SIMPSON: Objection.

15 Subsequent remedial measures.

16 THE COURT: Sustained.

17 BY MR. HEENAN:

18 Q. You reviewed the Collection Master notes  
19 prior to filing this lawsuit.

20 A. That's correct.

21 MR. HEENAN: Can I have up

22 Exhibit 111, please.

23

24 BY MR. HEENAN:

25 Q. You were aware CACV had already sued Mr.

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1 McCullough and the case had been dismissed. Isn't  
2 that correct?

3 A. No, I wasn't.

4 Q. Would you have had these Collection Master  
5 notes available for your review prior to filing  
6 the lawsuit against Mr. McCullough?

7 A. If those are a copy of the notes from our  
8 office.

9 MR. HEENAN: Pull up just the top  
10 part here.

11 BY MR. HEENAN:

12 Q. Can you read that, Mr. Dendy, in the  
13 black? I can show you my copy which might be a  
14 little bit easier to read.

15 Maybe let me just speed this  
16 along. I will represent to you that Exhibit 111  
17 was provided to me by Ms. Lauinger and represented  
18 to me are the Collection Master notes.

19 A. I understand. That would have been  
20 available, then.

21 Q. Thank you.

22 MR. HEENAN: You can take that  
23 down. Page 10 of that exhibit, please.

24 BY MR. HEENAN:

25 Q. Reflected in the notes is the fact that

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1 debtor filed an answer to a lawsuit and stated the  
2 statute of limitations had expired and someone  
3 says, if they are going by an open account, then  
4 we are, and then sent to the second law firm.

5 So you would have reviewed that  
6 prior to suing Mr. McCullough, right?

7 A. I don't recall seeing it prior to suing.

8 Q. Do you look at all the notes before you  
9 sue someone?

10 A. Yes, I do.

11 Q. If you would have seen that, would that  
12 have been a red flag for you?

13 A. Not necessarily.

14 Q. Would you have wanted to follow up who was  
15 the first law firm and why did they dismiss the  
16 first lawsuit?

17 A. Yes, I would.

18 Q. But you didn't do that here.

19 A. No.

20 Q. Now, in the Collection Master account  
21 screen, it was represented that Mr. McCullough had  
22 made a payment on June 30 of 2004. Do you recall  
23 that document?

24 A. Yes.

25 Q. Or that exchange, the e-mails?

1       A.           Yes.

2       Q.           If we look at page eight, doesn't it say  
3       right there in the notes, June 30, 2004, costs?

4       A.           Yes, it does.

5       Q.           Did you ever go back and look at your  
6       client's notes to see what they had inputted under  
7       that date, June 30, 2004?

8       A.           No. That wouldn't be reflected in our  
9       file here.

10      Q.           Why not?

11      A.           What you see here is what you get.  
12      There's nothing I can click on here to get more  
13      information.

14      Q.           Okay. But you could have -- that is  
15      something you would have reviewed prior to suing  
16      Mr. McCullough?

17      A.           I would have looked at the notes.

18      Q.           And you would have looked at that note,  
19      presumably.

20      A.           Yes.

21                   MR. HEENAN: Thanks.

22      BY MR. HEENAN:

23      Q.           Now, at some point you get these documents  
24      in that we have looked at that are Exhibit 508.

25                   MR. HEENAN: If you could pull

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1       those back up, please.

2       BY MR. HEENAN:

3       Q.       Where do these documents come from?

4       A.       Is it up?

5                               MR. HEENAN:   508.

6       BY MR. HEENAN:

7       Q.       While he is pulling that up, you can  
8       answer. Do you know where that document came  
9       from? Or do you need to see it again?

10      A.       What was it?

11      Q.       It was -- there we go.

12                           MR. HEENAN:   Page two of that,  
13      please.

14      BY MR. HEENAN:

15      Q.       Do you know where these documents came  
16      from?

17      A.       They would have been provided to us by  
18      Collect America.

19      Q.       Who at Collect America?

20      A.       I don't know.

21      Q.       Now, when we talk about CACV, you're aware  
22      there are no employees of CACV, right?

23      A.       Yes.

24      Q.       Have you ever reviewed any type of  
25      documentation whereby people purport to have the

1 authority to file lawsuits on behalf of CACV?

2 A. Not that I can recall.

3 Q. But when someone at Collect America tells  
4 you something, you take them at their word that  
5 that's appropriate to file a lawsuit on behalf of  
6 CACV?

7 A. Yes.

8 Q. Now, when we look at this document, you  
9 would have looked at these documents when they  
10 came in. Right?

11 A. That's correct.

12 Q. This lawsuit against Mr. McCullough was  
13 filed in 2007, right?

14 A. That's correct.

15 Q. Five-year statute of limitations in  
16 Montana.

17 A. Right.

18 Q. The account statement that Johnson  
19 Rodenburg gets from somewhere is dated 2000,  
20 right?

21 A. That's correct.

22 Q. So would that have been a red flag to you  
23 with respect to the statute of limitations issue  
24 that Mr. McCullough raised.

25 A. No, because the information that the

1 client had provided us was that the last payment  
2 was made to the client.

3 Q. But now you have documents and the  
4 documents show 2000. So that wouldn't be a red  
5 flag?

6 A. These documents could be exactly what they  
7 are. And then the account was charged off and  
8 sold to CACV, and then a payment was made to CACV.  
9 That later payment's not going to change the way  
10 this document in 2000 looks.

11 Q. Wouldn't you want to see some  
12 documentation from your client reflecting a  
13 different date, or no?

14 A. I think that's the type of transaction and  
15 that's information that the client should have  
16 straight.

17 Q. You're aware that the client, CACV, has  
18 testified that they rely on their counsel, Johnson  
19 Rodenburg, to make sure the information is  
20 straight.

21 MR. SIMPSON: Objection.  
22 Mischaracterizes testimony.

23 THE COURT: Overruled.

24 THE WITNESS: I'm not really  
25 aware of that testimony.



1 BY MR. HEENAN:

2 Q. You haven't reviewed Mr. Dunker's trial  
3 perpetuation testimony?

4 A. No.

5 MR. HEENAN: Next page of that  
6 document, please. Next page of that document,  
7 please. Can you flip it somehow?

8 BY MR. HEENAN:

9 Q. Now, this is a document that is dated  
10 April 2002, right?

11 A. Yes.

12 Q. And according to the notes and the  
13 Collection Master information that CACV provided  
14 to Johnson Rodenburg, they represented that the  
15 account had been sold to CACV in 2001. Right?

16 A. I believe that's correct.

17 Q. So wouldn't that be a red flag for you if  
18 they are giving you a contract saying it's  
19 applicable to Mr. McCullough and it's dated after  
20 the account has already been sold?

21 A. That could be. But I didn't notice it at  
22 the time.

23 Q. This review of information prior to filing  
24 a lawsuit in this case against Mr. McCullough,  
25 that is no different than your review of the other

1 lawsuits that you file in Montana?

2 A. Every case is unique.

3 Q. So sometimes you do more, sometimes you do  
4 less?

5 A. I wouldn't do less, but sometimes I do  
6 more.

7 Q. Okay. When you do more, what do you do?

8 A. Well, if there's -- sometimes there's been  
9 a dispute before the lawsuit's filed, something,  
10 some indication maybe of bankruptcy or something  
11 else that requires special attention.

12 Q. What if there hasn't been a dispute? Is  
13 the review you conducted prior to suing Mr.  
14 McCullough the same as the review you conduct  
15 prior to suing all the other people in Montana?

16 A. If the other files look the same as this  
17 one did before suit, yes.

18 Q. Have you ever seen a Chemical Bank credit  
19 card agreement?

20 A. Not that I know of.

21 Q. How many attorneys in Johnson Rodenburg  
22 are licensed to practice law in the state of  
23 Montana?

24 A. In the Bismarck office?

25 Q. How many offices does Johnson Rodenburg

1 have?

2 A. Two, Bismarck and Fargo.

3 Q. How many in the Bismarck office?

4 A. There are two right now in Bismarck.

5 Q. How many in the Fargo office?

6 A. I believe two.

7 Q. And you handle the Montana lawsuits in the  
8 Bismarck office, right?

9 A. Right.

10 Q. And there's another attorney or attorneys  
11 that handle the lawsuits from the Fargo office in  
12 Montana?

13 A. That's correct.

14 Q. So you say the lawsuits filed are about  
15 half of Johnson Rodenburg's total number of  
16 lawsuits in Montana?

17 A. I can't say.

18 Q. You sent a subpoena to Chase Bank asking  
19 for information about Mr. McCullough's account.

20 A. That's correct.

21 Q. And it came back that they didn't have any  
22 information about Mr. McCullough or his account?

23 A. That's correct.

24 Q. You would agree with me that the review  
25 you conduct before filing lawsuits in the state of

1 Montana is the proofreading of unverified  
2 information provided by your debt-buyer clients.  
3 True?

4 A. No, I wouldn't agree with that. It's a  
5 review of the information supplied by the clients,  
6 but I wouldn't agree that it's unverified.

7 Q. You would agree it's just proofreading,  
8 wouldn't you?

9 A. It's proofreading and ensuring there  
10 aren't any inconsistencies in the information.

11 Q. You aren't looking at actual documents?

12 A. That's correct.

13 Q. Now, you testified about wanting to make  
14 sure -- strike that.

15 What would you have done if Mr.  
16 McCullough hadn't responded to the requests for  
17 admission?

18 MR. SIMPSON: Objection, calls  
19 for speculation.

20 THE COURT: Would you read the  
21 question back?

22 (Designated question is read.)

23 THE COURT: Overruled.

24 THE WITNESS: Could you repeat  
25 the question, please?

1 BY MR. HEENAN:

2 Q. What would you have done if Mr. McCullough  
3 hadn't responded to the requests for admission?

4 A. If he hadn't responded under the requests  
5 for admission, the next step in the lawsuit would  
6 have been to prepare to file a motion for summary  
7 judgement.

8 Q. What would have happened? What would your  
9 expectation be in filing a motion for summary  
10 judgement?

11 MR. SIMPSON: Same objection.

12 THE COURT: Overruled.

13 THE WITNESS: I guess I don't  
14 understand the question.

15 BY MR. HEENAN:

16 Q. What is your expectation as a lawyer when  
17 you file a motion for summary judgement? What are  
18 you hoping for?

19 A. That summary judgement will be entered in  
20 the case.

21 Q. And then what would happen?

22 A. Then there's a judgement in place.

23 Q. And once there's a judgement in place,  
24 then what happens?

25 A. Depends on the particular case. Sometimes

1 people set up payments, sometimes there would be  
2 other execution attempts.

3 Q. You collect on the judgement, right?

4 A. Right.

5 Q. And sometimes people set up payments.

6 What if they don't?

7 A. Then we will probably try to collect on  
8 it.

9 Q. How do you try to collect on it?

10 A. Through garnishment usually.

11 Q. Tell the jury what garnishment is.

12 A. When you obtain a Writ of Execution, a  
13 document from the Court, that confirms the  
14 balances owed on the judgement and then you can  
15 send that to the sheriff or a process server to  
16 serve on a person's employer or bank; somebody  
17 that has money owed to the defendant to obtain  
18 some or all of that money, to apply towards the  
19 judgement that's owed.

20 Q. Anything else that Johnson Rodenburg would  
21 do to collect the judgement?

22 A. Nothing I can think of right now.

23 Q. Johnson Rodenburg didn't do anything wrong  
24 here. Is that your testimony?

25 A. Yes, it is.

1 Q. Now, you're aware that this federal judge  
2 has concluded otherwise and said that Johnson  
3 Rodenburg violated the federal law. Correct?

4 A. Yes, I am.

5 Q. Four different ways, right?

6 A. Yes.

7 Q. Johnson Rodenburg acted illegally when  
8 they sued Mr. McCullough, right?

9 A. I don't know. I don't recall the details  
10 of the orders.

11 Q. You haven't had a chance to look at those  
12 orders?

13 A. I've looked at them, but as I sit here  
14 today, I don't recall what was in them.

15 Q. So even though this federal judge has  
16 issued a ruling saying that Johnson Rodenburg  
17 violated the federal law four different ways, it's  
18 your testimony, sir, that Johnson Rodenburg didn't  
19 do anything wrong?

20 A. Yes, it is.

21 MR. HEENAN: No further  
22 questions. Thank you.

23 THE COURT: Any redirect  
24 examination?

25 MR. SIMPSON: Yes, Your Honor.

1 THE COURT: You may proceed.

2

3 REDIRECT EXAMINATION

4 BY MR. SIMPSON:

5 Q. Charles, you were asked some questions  
6 about the card member agreement and there was a  
7 agreement in the file that was dated April of  
8 2002. Do you remember that?

9 A. Yes, I do.

10 Q. You said you've seen hundreds of these  
11 things. Is that right?

12 A. Yes, I have.

13 Q. Do the terms vary significantly from year  
14 to year per agreement?

15 A. Not usually, but I don't have occasion to  
16 sit and compare them.

17 Q. I want you to look briefly. You were  
18 asked questions about your investigation on what  
19 documents you had in the file to support your  
20 claim.

21 First let me ask you this. Do you  
22 sometimes, during the course of a lawsuit, get  
23 documents that support your case as you go along?

24 A. Yes, a lot of times.

25 MR. SIMPSON: Bring up Exhibit

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1 506, please.

2 BY MR. SIMPSON:

3 Q. This is Exhibit 506. What is that  
4 document?

5 A. It's a copy of an Affidavit of Sale from  
6 Chase Bank USA NA.

7 Q. And what is it selling? What is it  
8 representing? In layperson's terms, if you could,  
9 what does this show?

10 A. This is an affidavit signed by somebody at  
11 Chase Bank saying that Chase sold and  
12 transferred --

13 MR. HEENAN: I object, Your  
14 Honor. Hearsay, foundation.

15 THE COURT: Sustained.

16 BY MR. SIMPSON:

17 Q. Was this a document that you received  
18 during the course of your work on this file?

19 A. Yes, it was.

20 Q. Was it a document you relied on in  
21 pursuing the claim against Mr. McCullough?

22 A. I don't recall when it was received at  
23 this point. I would have to --

24 Q. In your view, did it substantiate the  
25 claim?

1       A.           Certainly. This substantiates that the  
2       account was owed and that it was transferred to  
3       CACV by Chase.

4       Q.           This document was received at your office?

5       A.           Yes, it was.

6                   MR. SIMPSON: I move for the  
7       admission of 506. The witness has testified it  
8       was part of his investigation. It was part of  
9       the number of documents that he received.

10                  THE COURT: He testified he  
11       doesn't know when it came in. And he indicated  
12       to the jury his understanding of what it says, so  
13       I have sustained the objection.

14       BY MR. SIMPSON:

15       Q.           You were asked some questions at the end  
16       about all the things that could happen if you got  
17       a judgement against Mr. McCullough or some other  
18       debtor. Do you remember those questions?

19       A.           Yes.

20       Q.           Again, I think we covered this once, but I  
21       want to make this clear. Did you get a judgement  
22       against him?

23       A.           No, there was no judgement entered against  
24       him.

25       Q.           So there was no garnishment?

1       A.           No.

2       Q.           Any execution on any property he owned?

3       A.           No.

4                   MR. SIMPSON:   No more questions.

5       Thank you.

6                   THE COURT:   Mr. Dendy, you may

7       step down.

8                   Please call your next witness.

9                   MR. BOHYER:   Judge, can we have a  
10      moment to confer about our next witness, please,  
11      just Fred and I?

12                  THE COURT:   Yes.

13                  MR. BOHYER:   Can we step back  
14      here just a minute?

15                  THE COURT:   Let us take a short  
16      break and let us know.

17                  Members of the jury, do remember  
18      and follow the admonitions that I've given you  
19      previously. We will be in a short recess.

20                  (Brief recess.)

21                  (The following discussion takes  
22      place in chambers:)

23                  MR. BOHYER:   I want to confirm on  
24      the record that our understanding with respect to  
25      the pre-admitted exhibits is correct. And as I

1 understand Your Honor's ruling, those exhibits  
2 that were pre-admitted and referred to by the  
3 parties in opening or through witness testimony,  
4 as long as they were pre-admitted, those are  
5 going to the jury. Correct?

6 THE COURT: Yes.

7 MR. BOHYER: With that, the  
8 defendant rests.

9 THE COURT: Okay. Any rebuttal?

10 MR. HEENAN: No, Your Honor, but  
11 I think at this point it's appropriate for me to  
12 make my motion.

13 THE COURT: Let's let the jury go  
14 and I will tell them that you have rested and  
15 then we will let them go. And maybe this doesn't  
16 need to be on the record.

17 (Discussion off the record.)

18 THE COURT: With respect to the  
19 handling of exhibits, I'm gathering by the  
20 silence that nobody is objecting to the handling  
21 of exhibits as outlined by the Court. Is that  
22 correct?

23 MR. HEENAN: Yes.

24 THE COURT: Defendant?

25 MR. BOHYER: Agreed.

1 THE CLERK: Can I make sure I  
2 have it straight?

3 THE COURT: Yes, and we will do  
4 that as soon as we let the jury go. I will have  
5 them come back at 9:15.

6 (Brief recess.)

7 THE COURT: Court is in session.  
8 Ladies and gentlemen of the jury, the defendant  
9 has advised me that they have now rested, which I  
10 explained earlier means they have now presented  
11 all the evidence that they wish you to consider.  
12 So you've now heard all of the evidence presented  
13 upon which you will deliberate.

14 So I'm going to release you this  
15 afternoon and ask you to be back here at 9:15 in  
16 the morning. And at 9:15, then, the lawyers will  
17 present their closing arguments to you. I will  
18 then instruct you on the law that is to govern  
19 your deliberations and then you will retire to  
20 deliberate on your verdict. So I expect, by late  
21 morning, you will have the case to deliberate.

22 This evening, it's very  
23 important, again, that you remember the  
24 admonitions I've given you. Don't discuss the  
25 case with anyone. Don't do any research on your

1 own, and keep an open mind until you've heard the  
2 arguments of the lawyers, the instructions of the  
3 Court and you retire to hear the opinions of your  
4 fellow jurors and to deliberate.

5 So have a nice evening and I will  
6 see you tomorrow morning at 9:15.

7 We will be in recess.

8 (Court is adjourned.)

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1 C E R T I F I C A T E O F O F F I C E R.

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3 I, Virginia Leyendecker, a Certified Shorthand  
4 Reporter and Notary Public, do hereby certify that  
5 the foregoing is a true and accurate transcript of  
6 the testimony as taken stenographically by and before  
7 me at the date, time and location aforementioned.

8 I do further certify that I am neither a relative  
9 nor employee, nor attorney or counsel to any parties  
10 involved; that I am neither related to nor employed  
11 by any such attorney or counsel, and that I am not  
12 financially interested in the action.

13

14

15

16 /s/Virginia E. Leyendecker, CSR

17 Notary Public

18 My Commission expires May 3, 2010

19 NJ C.S.R. License No. XI-1701

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25

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